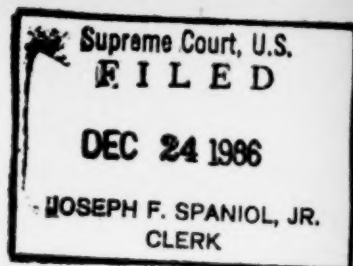


86 - 10 69 (1)



No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

\_\_\_\_\_  
JOHN WAGNER, et al., Petitioners

vs.

JOSEPH BRAZAS, et al., Respondents  
\_\_\_\_\_

PETITION FOR A WRIT OF CERTIORARI

TO THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA.  
[SECOND APPELLATE DISTRICT, DIVISION TWO]  
\_\_\_\_\_

Stewart C. Pollack  
Attorney at Law  
1440 Broadway, Suite 800  
Oakland, California 94612  
Counsel for Petitioners  
(415) 763-1477

160 PM



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

---

JOHN WAGNER, et al., Petitioners

vs.

JOSEPH BRAZAS, et al., Respondents

---

PETITION FOR A WRIT OF CERTIORARI

TO THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
[SECOND APPELLATE DISTRICT, DIVISION TWO]

---

Stewart C. Pollack  
Attorney at Law  
1440 Broadway, Suite 800  
Oakland, California 94612  
Counsel for Petitioners  
(415) 763-1477





## QUESTIONS PRESENTED

I. Did the State Court, through overbroad rulings on the admissibility of unpopular political speech in a civil conspiracy action, fail to heed the protections afforded by the First Amendment and the restraints it imposes on accountability for damages?

II. Does holding P.L.P.'s national office liable for damages impermissibly burden fragile First Amendment Rights, where there has been no showing that national P.L.P. knew of or ratified any local act complained of, and no showing that any local member or associate had actual or apparent authority to commit the acts giving rise to damages?

III. Were individual Petitioners' rights to Freedom of Association impaired by failure to apply strict tests to determine whether those individuals possessed specific intent to further unlawful aims?



IV. Did the trial court's findings of contempt of essential witnesses for Petitioners for failure to identify or name political associates abridge Petitioners' First Amendment associational rights and deprive Petitioners of a fair trial, in the absence of a compelling state justification for disclosure?

V. Were Petitioners subjected to a prior restraint on their First Amendment Freedom of Expression?



## LIST OF PARTIES

The parties to the proceedings in the California Court of Appeal included:

Petitioner the PROGRESSIVE LABOR PARTY, a political association, and individual Petitioners John WAGNER, Hugo SARMIENTO, Barbara HERTZ, Raul FERNANDEZ, Barry SAUTMAN, Francesca SAUTMAN, Martha Tafoya FERNANDEZ, Edgar HERNANDEZ, John HANKEY, Pedro GUERRERO, William QUEMADA, Francisco Rolando ESTRADA, Frank MORA, Oscar AMAYA, and Jose Ofelio HERNANDEZ; and

Respondents Joseph BRAZAS, Robert MARTIN, David LEATON, Rodger BURTON, Ronald McGOWIN, Robert LEON, Samuel BARRON, Craig HREHOR, and James RIGNEY.



## TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED.....	ii
LIST OF PARTIES.....	iv
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS INVOLVED....	4
STATEMENT OF THE CASE.....	4
1. Trial Court Dispositions.....	6
2. The Incidents of June 18, 1977.....	11
a. The Organizations Involved.....	11
b. The Use of Sound Amplification Equipment by Demonstrators.....	14
c. The Altercation Between Police and Demonstrators.....	19
3. The Factual Basis for Conspiracy.....	22
4. The Contempt of Petitioner Hertz and Exclusion of Witness Kennedy's Testimony..	28
5. The Raising of Issues Below..	35





## TABLE OF CONTENTS (Cont'd)

	<u>Page</u>
REASONS FOR GRANTING THE WRIT.....	37
I. Rulings on the Admissibility of Protected Speech Prejudiced Petitioners' Trial and Directly Conflict with This Court's Decisions on the Limits of Civil Liability Consistent with the First Amendment.....	37
II. The State Court's Holding National P.L.P. Liable for Local Actions is in Direct Conflict with This Court's Decision in <u>N.A.A.C.P. vs.</u> <u>Claiborne Hardware</u> .....	41
III. The Court of Appeal Failed to Apply the Strict Constitutional Test Necessary to Impose Conspiracy Liability on Individual Petitioners....	44
IV. The Trial Court's Finding of Contempt For Failure to Disclose or Name Political Associates Abridged First Amendment Rights and Deprived Petitioners of a Fair Trial.....	49
V. Petitioners Were Subjected to a Prior Restraint of Freedom of Expression.....	51
CONCLUSION.....	52
APPENDIX.....	A-1



# TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Barenblatt v. United States</u> (1959) 360 U.S. 72	50
<u>Brandenburg v. Ohio</u> (1969) 354 U.S. 298	37
<u>Chaplinsky v. New Hampshire</u> (1942) 315 U.S. 568	37
<u>DeGregory v. Attorney General of New Hampshire</u> (1966) 383 U.S. 825	50
<u>N.A.A.C.P. v. Alabama ex rel Patterson</u> (1958) 357 U.S. 449	49
<u>N.A.A.C.P. v. Claiborne Hardware</u> (1982) 458 U.S. 886	37, 39, 41, 44
<u>N.A.A.C.P. v. Overstreet</u> (1966) 384 U.S. 118	41
<u>Noto v. United States</u> (1961) 367 U.S. 290	38, 45
<u>Saia v. People of the State of New York</u> (1948) 334 U.S. 558, 560-561	52
<u>Schenck v. United States</u> (1919) 249 U.S. 47	37
<u>Uphaus v. Wyman</u> (1959) 360 U.S. 72	50
<u>Watts v. United States</u> (1969) 394 U.S. 705	38



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

---

JOHN WAGNER, et al., Petitioners

vs.

JOSEPH BRAZAS, et al., Respondents

---

PETITION FOR A WRIT OF CERTIORARI

TO THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
[Second Appellate District, Division Two]

---

Petitioners the PROGRESSIVE LABOR PARTY, John WAGNER, Hugo SARMIENTO, Barbara HERTZ, Raul FERNANDEZ, Barry SAUTMAN, Francesca SAUTMAN, Martha Tafoya FERNANDEZ, Edgar HERNANDEZ, John HANKEY, Pedro GUERRERO, William QUEMADA, Francisco Rolando ESTRADA, Frank MORA, Oscar AMAYA, and Jose Ofelio HERNANDEZ respectfully pray that a WRIT OF CERTIORARI issue to review the judgment and opinion of the Court of Appeal



of the State of California, Second Appellate District, Division 2, rendered in the above-entitled proceeding on July 7, 1986.

#### OPINIONS BELOW

The unreported opinion of the Court of Appeal of the State of California, Second Appellate District, Division 2, is reprinted in the Appendix hereto at page A3 . The Order of the Supreme Court of the State of California, denying review after judgment by the Court of Appeal, is reprinted in the Appendix hereto at page A2 .

The Judgment on Jury Verdict, and the Special Verdict upon which said judgment was entered in the Superior Court of California, County of Los Angeles, are reproduced in Appendix hereto, at page A25 and page A29 , respectively.

#### JURISDICTION

On June 28, 1977, Respondent Los Angeles police officers filed suit against





Petitioners in the Superior Court of the State of California, Los Angeles County.

As subsequently amended, Respondents' complaint alleged a civil conspiracy to commit assault and battery upon the officers. Jury trial commenced on June 15, 1982; a judgment awarding Respondents compensatory and punitive damages was entered on August 23, 1982.

The trial court judgment was affirmed by opinion and judgment of the Court of Appeal of the State of California, Second Appellate District, Division Two, entered on July 7, 1986. By an order filed on September 25, 1986, the Supreme Court of the State of California declined and denied discretionary review of the appellate Court's judgment.

The jurisdiction of this court to review the judgment of the Court of Appeal of the State of California is invoked under 28 U.S.C. § 1257(3).



## CONSTITUTIONAL PROVISIONS INVOLVED

### United States Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### United States Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

The present case arises from a public demonstration and march held in the downtown Los Angeles garment district on June 18, 1977.



The march was disrupted by two altercations between police and demonstrators: the first, as police attempted to arrest a demonstrator for an alleged violation of a city ordinance regulating the use of amplified sound devices; and the second, as police effected the mass arrest of all demonstrators still present at the scene. Both police and demonstrators were injured in the incidents.

Respondent police officers filed suit for damages, alleging that their injuries resulted from a conspiracy, on the part of Petitioner the Progressive Labor Party (P.L.P.) and the individual Petitioner-demonstrators, to commit assaults and batteries upon the officers. Respondents' principal witness on the theory of conspiracy was Constance Milazzo Dial, a member of the Los Angeles Police Department's Public Disorder Intelligence Division; under instruction from her supervisors, Dial had been attending P.L.P.



meetings and functions since May 1976, and had become a member of P.L.P.

Petitioners cross-complained,<sup>1/</sup> alleging causes of action for assault and battery, false arrest, malicious prosecution, conspiracy to interfere with civil rights [42 U.S.C. §§1985 (2) and (3)], and for individual actions depriving Petitioners of their constitutional rights.

#### 1. Trial Court Dispositions

In their initial pleadings, Respondents named as individual defendants Milton Rosen and Mort Scheer; in later evidentiary proceedings, Rosen and Scheer were referred to as leaders of the national office of P.L.P. Prior to the taking of evidence, cross-complaints that had been

---

1. The cross-complaint added as cross-defendants the City and County of Los Angeles, and Edward Davis individually and as police chief of Los Angeles; these added cross-defendants were apparently never served with process, and the action proceeded without them. The Los Angeles City Attorney's Office did, however, provide representation to Respondents in their capacities as cross-defendants.





filed on behalf of Rosen and Scheer were voluntarily dismissed. At the conclusion of Respondents' case, the motion of defendants Rosen and Scheer for a judgment of non-suit as to Respondents' complaints against them was granted, without opposition by Respondents. <sup>2/</sup>

Prior to trial, Respondents dismissed their complaint against defendant Victor Guerrero, referred to in later evidentiary proceedings as a leader of the Los Angeles chapter of P.L.P.; before the commencement of trial, Petitioners dismissed their third cause of action, which had alleged the malicious prosecution of Victor Guerrero.

---

2. The motions for non-suit as to a number of other individual defendants were also granted without Respondents' opposition following presentation of Respondent-plaintiffs' case. There were, in addition, other pre-trial and post-evidence dismissals or dispositions of various individuals' complaints or cross-complaints. In the interest of clarity, only those dispositions thought to have a bearing upon the questions presented for review, or thought to be essential to an understanding of the case, have been recounted here.



Following opening statement, a judgment of non-suit was entered as to Petitioners' fourth cause action, alleging a conspiracy to interfere with Petitioners' civil rights [42 U.S.C. §§1985 (2) and (3)]. The trial court found that counsel's opening statement had offered nothing to indicate that individual Respondent officers, as opposed to the L.A.P.D. generally or its Public Disorder Intelligence Division (P.D.I.D.), were engaged in conspiratorial activity.<sup>3/</sup>

/ / / / /

/ / / / /

/ / / / /

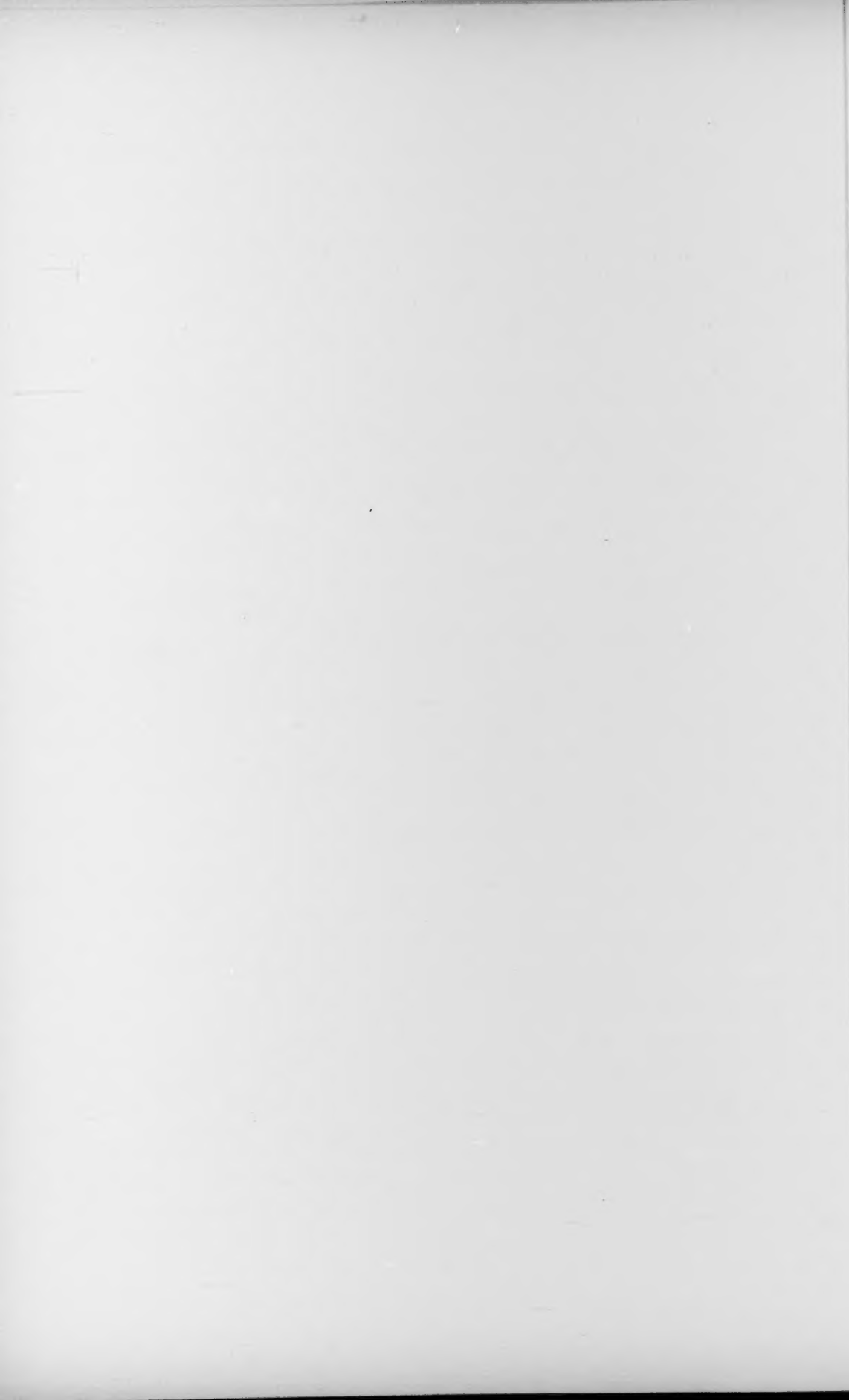
/ / / / /

/ / / / /

/ / / / /

---

3. Petitioners consider the trial court's ruling on this point significant and recognize that the issue has clear due process implications not raised in the California Court of Appeal. Since it is felt that this ruling has great importance to an understanding of the events at trial, a more detailed summary and discussion of the ruling is set forth in the Appendix hereto, at page A42.



At the conclusion of evidence, the trial court granted Respondents' motion for non-suit on the first and second causes of action of Petitioners' cross-complaint, alleging assault and battery and false arrest. With two exceptions,<sup>4/</sup> non-suit was also granted as to the fifth cause of action of Petitioners' cross-complaint, alleging individual acts of Respondent officers in violation of Petitioners' constitutional rights. As a result, the principal matter left for jury decision was Respondents' complaint that Petitioners had conspired to assault and batter the officers.<sup>5/</sup>

---

4. The court permitted the fifth cause of action of the cross-complaint to proceed as to Petitioner Hankey against cross-defendant Ronald Vencill, and as to Petitioner Raul Fernandez against Respondents-cross-defendants Robert Martin and Robert Leon. The jury returned a verdict in Hankey's favor for \$500.00 in general damages and \$1,000.00 in punitive damages; and the jury determined against Fernandez on his cross-complaint.

5. A motion for a directed verdict against Petitioner Edgar Hernandez was granted in favor of Respondent Roger Burton and the jury was so instructed.



The jury returned special verdicts (Appendix, infra. at page ) against all remaining Petitioners-Defendants, finding them jointly and severally liable for compensatory damages in favor of Respondents-Plaintiffs in the following amounts:

JOSEPH BRAZAS	\$ 33,022.96
CRAIG M. HREHOR	167,934.08
SAMUEL BARRON	936.05
DAVID L. LEATON	470.23
ROBERT LEON	4,237.24
RONALD MCGOWIN	335.00
JAMES RIGNEY	1,177.60
RODGER BURTON	280.60
ROBERT MARTIN	4,659.16

In addition, punitive damages in the amount of \$100.00 were assessed against each individual Petitioner-Defendant, except Barbara Hertz, in favor of each remaining Respondent-Plaintiff, for a total of \$900.00 against each Petitioner-Defendant. Petitioner-Defendant Barbara Hertz was





assessed punitive damages of \$200.00 in favor of each Respondent-plaintiff, for a total of \$1800.00. Petitioner-Defendant the Progressive Labor Party was assessed punitive damages of \$10,000.00 in favor of each Respondent-Plaintiff, for a total of \$90,000.

2. The Incidents of June 18, 1977.

a. The Organizations Involved

The demonstration of June 18, 1977 was conceived by the local leadership of the Committee Against Racism (C.A.R.), as part of that group's campaign to organize an independent garment-workers' union in the Los Angeles area. In the planning and direction of the march, C.A.R. was joined by members of the Los Angeles chapter of P.L.P. Individual participants in the march included persons who were members of the local C.A.R. or P.L.P. organizations, or of both, as well as persons who were members of



neither organization. According to defense witnesses, a number of children accompanied their demonstrating parents.

Defense witnesses testified that the purposes of the march were to publicize C.A.R.'s unionization drive; to protest intolerable working conditions in the garment district; to call attention to the hardships and inequalities suffered by alien workers as a result of the country's immigration policies; and to protest certain incidents of police abuse of hispanics.

Defense witnesses described C.A.R. as an organization of workers, students and professionals united by the proposition that the elimination of racism must precede meaningful social change; neither leftist nor communistic politics were described as a pre-requisite to membership in C.A.R. or participation in its activities.

P.D.I.D. officer Dial described C.A.R. as "like a front group" for P.L.P., utilized by the latter as a source of new "recruits."



Dial, through her testimony concerning prior meetings and activities of P.L.P. (set forth in detail in section (3), infra) went on to characterize P.L.P. as a violent organization.

Defense witnesses acknowledged that P.L.P. is a revolutionary communist party and that, as such, it believes that revolution is the inevitable means toward the abolition of capitalism and the establishment of a society based on workers' power. However, defense witnesses pointed out that P.L.P. neither urges nor practices a policy of immediate revolution in the United States; and that its advocacy of revolution would lead it to support insurrection only in such an historical period, not the present one, as one in which the majority of people had decided to eliminate capitalist exploitation.

The defense stressed that P.L.P. specifically renounces terrorism and isolated acts of violence; and that the



party, in the current period, is primarily a vehicle for political education and organization of workers to meet immediate needs for jobs, for better pay and working conditions, for an end to racist employment practices and an end to abuses of power by law enforcement and immigration authorities. Defense witnesses denied any plan or purpose to engage police in violent confrontations.

b. The Use of Sound Amplification Equipment By Demonstrators.

Prior to the march, approximately 50 to 75 demonstrators assembled in a parking lot on Eighth Street between Maple and Santee Streets in Los Angeles. Before the march began, Sgt. Woodworth approached persons he identified as leaders of the demonstration, Barbara Hertz and Victor Guerrero, and warned them against the violation of any traffic laws; he also warned them against the use of a bullhorn in the area. While there was conflicting





testimony as to whether the bullhorn could at any time be heard beyond the two-hundred-foot limitation proscribed by Los Angeles Municipal Code §115.02<sup>6/</sup>, Sgt. Woodworth testified that upon his initial approach, he simply informed demonstrators not to utilize the device:

"I asked him about some portable P.A. systems I observed being held by some of the people that were there with him. I asked them not to use that because they could be illegally used at that location....[emphasis added]

(Reporters Transcript (RT), p. 89)

I informed him that if the P.A. system was going to be continually used, that persons that would use it would be arrested.

(RT, p.101)

Similarly, Respondent Craig Hrehor testified to his recollection of Woodworth's statement:

---

6. The sole version of the ordinance preserved in the record is embodied in a jury instruction, reproduced in the Appendix hereto at p.A45.

11

Q. And isn't it a fact that when you say you went over to where Sergeant Woodward had addressed the demonstrators he had warned them against using the bullhorn; isn't that true?

A. That is true.

Q. And at no time did you ever hear him say turn that bullhorn down, did you?

A. He informed the demonstrators it was illegal to use the bullhorn.

(RT, p.628)

There was no dispute in the evidence that the demonstrators were never asked to turn down the volume of the P.A. system, and that there were no schools, churches or hospitals along the march route in a commercial and industrial area on the Saturday of the demonstration. As the demonstrators moved toward Los Angeles Street, and the bullhorn continued to be used, Sgt. Woodworth ordered Respondent officers Leon and Martin to arrest the man using the bullhorn. The following statement, from a deposition of Sgt. Woodworth, was entered into evidence:

/ / / / /

/ / / / /



.... I received a radio transmission from Sergeant Brazas that an individual male wearing a red checked shirt was using a P A system in front. I was unable to see that person. I formed the opinion that it was Victor Guerrero. I gave a radio broadcast to officers Leon and Martin to go to Eighth and Los Angeles and arrest that person....

(RT, p. 3620)

In evidence entered into the record from Respondent Sgt. Brazas's deposition, Brazas stated that, at the time of the demonstration, Brazas gave Woodworth the "run down" of ordinance sections "normally violated by protesters," including sound amplification laws; and that, at the demonstration, Brazas witnessed a violation of the sound law:

- Q. What was it about the amplifying equipment that was illegal?
- A. It is against the law to use amplifying equipment during a protest.

(RT, p. 3606)

Testimony introduced from the deposition of Respondent Officer Burton indicated that, at the time Officer Martin moved in to make the



initial arrest, pursuant to Woodward's instructions, the amplification equipment was not audible from just a short distance away:

- A. Officer Martin moved into the crowd and attempted to remove one of the demonstrators with a bullhorn from the crowd.
- Q. How far was Officer Martin from you at the point of time where you first saw him?
- A. Cater-corner across the street.
- Q. 30 yards?
- A. No, 20 yards.
- Q. Were you able to hear him at that point?
- A. No.
- Q. Were you able to hear the bullhorn at that point?
- A. No.

(RT, p. 3602)

A jury instruction regarding the constitutional untenability of a ban or prior restraint on the use of loudspeakers was requested and refused at trial; the requested instruction is set forth in the Appendix hereto, at p. A46 . Petitioners brief in the California Court of Appeal also raised the issue; and that portion of the brief is reproduced in the Appendix hereto at page A47 .





c. The Altercations Between 7/  
Police and Demonstrators

Acting under Sgt. Woodworth's directions, Officer Martin, accompanied by Officer Leon, attempted to arrest demonstrator Victor Guerrero for alleged unlawful use of a bullhorn at the head of the march.<sup>8/</sup> Respondent officers testified that one demonstrator pulled Guerrero from Martin's group, and that Martin and Leon were then set upon by five or six

// //

---

7. The trial in this matter consumed approximately ten weeks, and reported testimony, and documents, fill a record feasible within the limitations of this nearly 4,500 pages in length. An abbreviated summary of the actual contacts during the altercations, with references to individual Petitioners and Respondents, is provided in the Appendix hereto at page A49 .

8. At trial, Petitioners contended that another demonstrator, not Guerrero, was using the bullhorn at the time; and that the officers' intent to arrest Guerrero was informed by their foreknowledge that he was a leader. See discussion at Appendix, page A42 .



demonstrators using 2 x 2 sticks that had been utilized to carry signs. Police answered with batons, and a general scuffle, lasting 30 to 45 seconds, ensued. Respondents Brazas and plainclothes officer Hrehor suffered significant head injuries in this altercation. Officers testified that Petitioner Wagner was among those who had struck Hrehor; and that Petitioners Pedro Guerrero, Edgar Hernandez and Jose Ofelio Hernandez were among those who had struck Brazas.

Half of the demonstrators dispersed with the outbreak of the above first incident; the remainder reassembled when the fracas ceased, and proceeded southward until hemmed in against a building at mid-block by a police line formed to contain them. Officers described the movement of these remaining demonstrators as a "skirmish line" marching in "military fashion" in "drag step," and stated that many demonstrators held their placard-less 2 x 2 sticks at



"port-arms," threatening the officers before them. Demonstrators generally denied assumption of any militaristic formation, denied a united or threatening display of sticks, and characterized their position, at this point, as defensive.

Over a police loudspeaker, Sgt. Woodworth informed demonstrators that they were under arrest and told them to put down their sticks. According to police, demonstration leader Barbara Hertz was at this point heard to urge demonstrators, "Don't listen to them, we must fight them," and to have commenced to chant, "Police are going to beat us, beat us." Sgt. Baughman then ordered police to begin taking demonstrators into custody.

Testimony was then disparate as to whether police reached into the group for a demonstrator, or whether five or six demonstrators advanced toward police. Renewed contact occurred, in which Petitioner Jose Ofelio Hernandez was alleged



to have swung at Officer Barron, and then to have been struck in return and subdued. The second altercation also lasted only for a brief period.

### 3. The Factual For Conspiracy

Respondents alleged that, on June 18, 1977, Petitioners "were acting in concert ....pursuant to an understanding and agreement between all of them that if the police should attempt to arrest anyone of them that they would respond by assaulting and battering the officers and freeing any person arrested from police custody...."

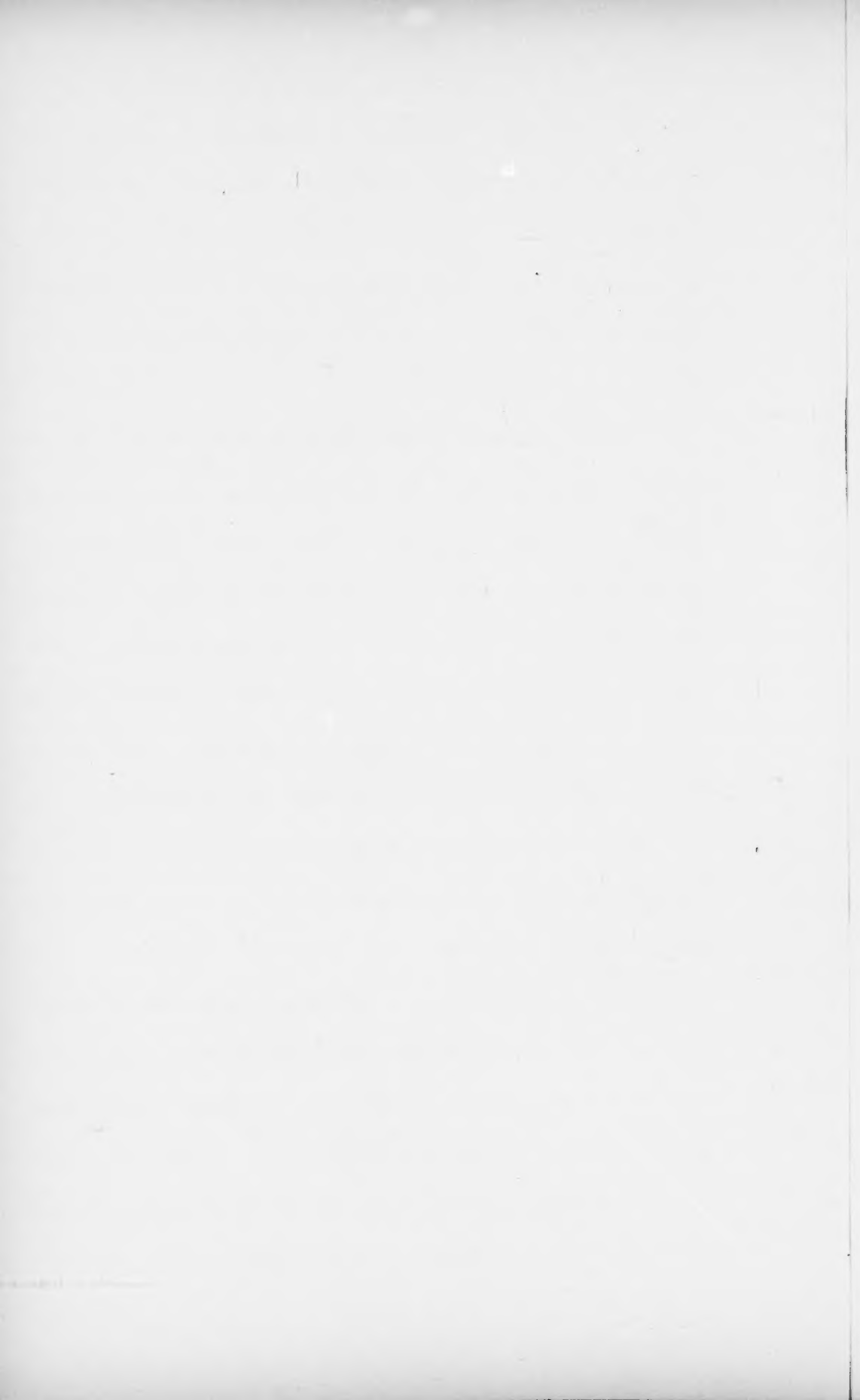
More particularly, Respondents urged that, by pre-arranged plan, persons assigned to "security" at P.L.P. demonstrations carried sticks bearing signs or placards; and that, upon initiation of an arrest by a law enforcement officer, "security" members would, also by pre-arrangement, remove the signs from their sticks and use the sticks





as offensive weapons against police in efforts to frustrate any arrest process. Respondents' notion of the content of the alleged conspiracy was framed to correspond directly to Respondents' explanation for the events of June 18.

Petitioners' witnesses testified that "security" did not constitute an ongoing function and plan; that any "security" associated with demonstrations was simply intended to maintain the organization and integrity of the marches; that signs were not intended as offensive weapons, and that there were no pre-ordained restrictions as to which marchers in a demonstration would carry signs; and that there was no plan to use sign sticks to attack police or frustrate arrests. There was testimony that, on a number of occasions, P.L.P. marchers had been involved in confrontations with right-wing antagonists, such as the Klan or Nazi party, or an anti-busing group called "Bus Stop", and that any P.L.P.



security training was defensive in nature.

In support of Respondents' theory of liability, P.D.I.D. officer Constance Milazzo Dial testified to a number of meetings or demonstrations involving P.L.P. prior to June 18, 1977. According to Dial, on one prior occasion, December 4, 1976, a group of demonstrators, including Petitioners Hertz, Martha Tafoya Fernandez, Estrada, Pedro Guerrero, Amaya, Barry and Francesca Sautman, Edgar Hernandez and Jose Hernandez, removed signs from their picket sticks and held the sticks in a "threatening" manner preventing police, including Sgt. Brazas, from arresting bullhorn speaker Raul Fernandez. No physical contact ensued.

Beyond this one incident, Dial testified to other occasions touching upon the function of picket sticks or the use of security. According to Dial, a speaker not a party to this case stated, at a planning session prior to an August 1976



demonstration in San Clemente, that sticks would be used to prevent arrests. Dial testified that there was "agreement" by "the persons who attended the meeting," but did not specify the manner or mode of agreement. According to Dial, Petitioners Hertz, Martha Tafoya Fernandez and Jose Ofelio Hernandez were present. At a meeting in September 1976, a speaker not a party to this action demonstrated, according to Dial, the use of a stick as a "weapon". Dial also testified that, at a January 16, 1977 meeting, attended by Petitioners Raul Fernandez, Martha Tafoya Fernandez, John Hankey, Frank Mora, Edgar Hernandez and Francesca Sautman, "it was decided" to use security to prevent arrests; Dial did not recall specific statements made by anyone on that occasion.<sup>9/</sup>

---

9. Dial's testimony concerning the above meeting is excerpted in the Appendix hereto, at p.A81.



Dial testified to two further meetings, at which it was stated that alien workers could participate in political demonstrations if protected against arrest by their numbers or militancy.

Over defense relevancy objections, Dial was also permitted to give testimony concerning a number of pre-June 18, 1977 meetings or events involving statements or political expressions by, or in the company of, persons she identified as P.L.P. members or associates. Such testimony conveyed Dial's impression that P.L.P. was a violence-prone organization, but was not confined to the actual content of the conspiracy alleged by Respondents. The testimony included:

- 1) A July 8, 1976 P.L.P. "forum" or political discussion session attended by Petitioners Hertz, Wagner, and Barry and Francesca Sautman, at which Hertz was said to have stated that the fight for socialism had to be not only intellectual but





physical, and another unidentified speaker to have said that P.L.P. supports violent revolution;

2) A June 10, 1977 demonstration to protest what demonstrators believed to be the unjustified killings of two hispanic men by Chicago police; at the demonstration, unspecified demonstrators carried signs reading "Death to Cop Assassins", and "Turn Rebellion into Revolution".

3) An April 13, 1977 meeting attended by no Petitioner, at which a speaker stated that the purpose of C.A.R.'s "Summer Project" would be to "incite rebellion in the ghettos."

4) A September 7, 1977 meeting concerning housing district harassment of persons in the Mar Vista housing project; according to Dial, Petitioner Quemada was present and stated that people should organize to "Kill the Pigs", by which Dial understood him to mean housing authority security officers and police. According to



Dial, "no one else was talking about it."

5) A July 11, 1976 meeting attended by none of the Petitioners, at which the speaker allegedly stated that violent overthrow of the government was necessary, and that P.L.P. members had to be willing to engage in violence and to kill police.

6) A meeting of May 23, 1976, at which slides of the Boston riots over busing were shown; according to Dial, the audience was told by unspecified speakers that P.L.P. or C.A.R. would incite similar riots in Los Angeles, and that participants would learn how to fight mounted policemen with sticks.

Dial's testimony concerning the above statements appears in the Appendix hereto, at page A56.

#### 4. The Contempt of Petitioner Hertz and the Exclusion of Witness Kennedy's Testimony

During trial, Petitioner Barbara Hertz was called as an adverse party witness.



Over defense objections and assertions of First and Fifth Amendment privileges, Hertz was ordered on pain of civil contempt to respond to questions as to whether, on June 18, 1977, each of the individual defendants was a member of P.L.P. or C.A.R.; and whether each of several other persons, who Respondents asserts were connected with P.L.P. activities, were P.L.P. or C.A.R. members. Hertz declined to answer and was, on July 20, 1982, held in contempt and ordered placed in the custody of the county jail until the conclusion of the proceedings.

Hertz and her counsel stated that Hertz's assertion of privilege was based on fears that government agencies might initiate actions against persons named, or that such persons might suffer the loss of jobs or other adverse consequences of harassment, had waived her privilege by answering related questions without objection at the time of her deposition.



The contempt hearing of Hertz appears in the Appendix hereto, at page A70 .

During the defense case, defendants presented the testimony of witness Ruth Kennedy. Kennedy stated that she had been a P.L.P. member from some time in 1973 or 1974, and that she had left the party in September 1977. She stated that she was well-acquainted with Respondent's principal witness, P.D.I.D. officer Dial, and that both had been in the same P.L.P. club.

Her testimony was directed toward disputing Dial's and Respondents' theory of the function of "security" in P.L.P. and disputing the Respondents' position that certain prior incidents were probative of any plan to use violence.

Kennedy testified that while a P.L.P. member, she had gone to one security training session in March or April 1977. She stated that the training consisted of calisthenics, and practice attempting to disarm persons referred to as "Nazis". She

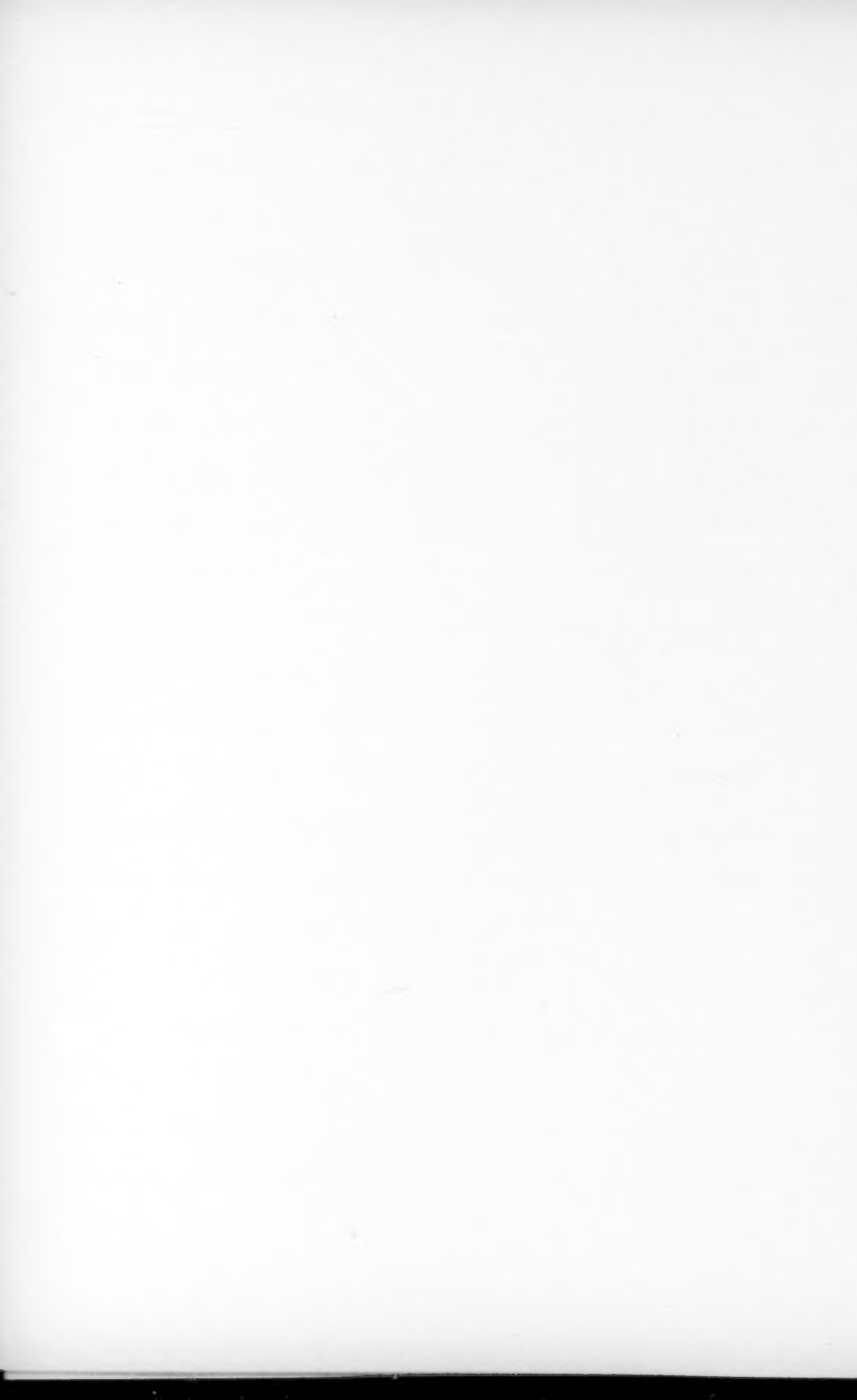




felt the need for such practice was based on previous incidents, such as a demonstration for jobs in Sacramento in 1974 at which Nazis were present, and a demonstration at the school board in early 1977, where members of a P.L.P. picket line had been shoved, pushed and had their signs torn by members of an anti-busing group known as "Bus Stop". Kennedy mentioned another incident in which a P.L.P. member had received a bomb threat.

Kennedy herself served on security at one P.L.P. event. In that instance, she stated, the purpose of security was basically described as keeping "trouble-makers" away from the speaker. There were no instructions to prevent arrests and no discussion of how to deal with police.

She testified that, to her knowledge, there was no set group known as P.L.P. "security", and that she had carried a picket sign on occasions when she was not on security.



Kennedy offered specific testimony denying the existence of any plan to prevent arrests at an August 28, 1976 demonstration; denying that there was any physical violence or use of picket sticks at a November 1976 demonstration at the Carter-Mondale victory celebration; and denying that it was ever stated, at the April 13, 1977 meeting referred to by Dial, that the purpose of the C.A.R. summer project was "to foment rebellion in the ghetto." Kennedy stated that the issue at the meeting was, rather, youth unemployment, and how to channel the energies of rebellious people into the fight for jobs.

On cross-examination, Dial was asked the name and address of the person at whose home the securitn training session had occurred. Defense counsel objected, on grounds of relevancy and asserted the witness' First Amendment associational privilege.

Kennedy stated that her assertion of



privilege was based on a fear of the adverse consequences disclosure might have for persons who were, in any case, not connected with the present lawsuit; and Kennedy declined to answer. Observing that there was "no single issue in this case that is more relevant than what security practices took place, where they took place and who was present," the court stated:

This is a contempt that in my opinion would stand up because of her taking the stand and testifying voluntarily in the first place. And to the extent that she may have had any privilege. It is very clear to me that she has waived it, but we are not going to have selective testimony. One of the most important rights in a trial is the right of cross-examination and I am not going to permit the witness to take the stand and testify on direct and then selectively decide what they are going to respond on the subject on cross-examination.

(RT 3448:28-3449:10)

The court then granted Respondents' motion to strike Kennedy's testimony in its entirety, and subsequently informed the jurors:



Ladies and gentlemen of the jury, as you heard just before you were excused the witness was refusing to answer any further questions respecting the matter that she testified to on direct, to-wit, attending a security practice in March or April of 1977.

It is the court's opinion that when a witness voluntarily takes the stand and testifies to a particular subject matter, that there is a right on the part of other parties to cross-examine them and that if a witness has a constitutional right that a witness may have had who voluntarily has taken the stand and chosen to testify on a subject has been waived. And since she refuses to answer, the court has several options and the option which I have chosen to exercise under the circumstances of this case is I have excused the witness and her direct testimony was stricken, and you are to disregard it entirely as though you had never heard it. You are not to consider any matter about which she testified to on direct.

(RT 3449:15-3450:5)

// //

// //

// //





## 5. The Raising of Issues Below

Petitioners met the introduction, as bases for conspiracy liability, of prior incidents of protected speech with relevancy objections trial, and arguments against admissibility urged in the Court of Appeal. The full constitutional dimensions were raised upon Petition to the California Supreme Court, which denied review.

The constitutional inadequacy of the record of support conspiracy liability for individual Petitioners, and for the national P.L.P., was raised in Petitioners' Motion For New Trial. The Court of Appeal found sufficient evidence as to individual petitioners, without giving the issues full constitutional consideration. Similarly, the Court of Appeal held there had been no showing that the national and local P.L.P. were distinct, and did not squarely confront the First Amendment issues involved. The issues were renewed on Petition to the



California Supreme Court.

The First Amendment issues implicated by the contempt of Hertz and the striking of Kennedy's testimony were argued at length in the course of trial, and raised in the District Court of Appeal, which ruled that the witnesses had "waived" their constitutional rights by voluntarily testifying at trial, or by testifying without objection upon Deposition. The issues were renewed in the Petition to the California Supreme Court.

At trial, a special jury instruction regarding the First Amendment's prohibition on absolute ban on sound amplification equipment was requested and refused. The issue of whether Petitioners had been ordered, without lawful basis, not to use such equipment was raised in the California Court of Appeal, incident to an argument that California Labor Code section 3852, the "Firemen's Rule", banned recovery for police officers for injury sustained in the line of



duty.

REASONS FOR GRANTING THE WRIT

- I. Rulings On the Admissibility of Protected Speech Prejudiced Petitioners' Trial and Directly Conflict With This Court's Decisions' On the Limits of Civil Liability Consistent With the First Amendment.

Words provoking an immediate violent response, or inducing an immediate panic, are not protected by the First Amendment. Chaplinsky v. New Hampshire (1942) 315 U.S. 568, 572; Schenck v. United States (1919) 249 U.S. 47. However, the simple advocacy of force or violence, where that advocacy is neither intended nor likely to produce imminent lawlessness, does not deprive speech of constitutional protection. Brandenburg vs. Ohio (1969) 354 U.S. 298, 320; N.A.A.C.P. v. Claiborne Hardware (1982)



458 U.S. 886, 927-929. Abstract teaching of the moral necessity for resort to force does not amount to preparation for violence. Noto v. United States (1961) 367 U.S. 290, 297-298.

The display of provocative or offensive signs may retain First Amendment protection. See: Cohen v. California (1971) 403 U.S. 15, 19 ["Fuck the Draft" inscribed on clothing.] Expressions apparently involving threats may, in a political context, amount to exhuberance or hyperbole enjoying constitutional protection. See: Watts v. United States (1969) 394 U.S. 705, 708 ["If they ever make me carry a rifle, the first man I want to get in my sights is L.B.J."]

Where liability is urged on the basis of public speech containing "highly charged political rhetoric lying at the core of the First Amendment," affixing responsibility must be approached with care; "the presence of activity protected by the First Amendment imposes restraints on the grounds that may





give rise to damages liability and on the persons who may be held accountable for those damages.: N.A.A.C.P. v. Clairborne Hardware, supra, 458 U.S. 886, 927-928, 917-918.

At trial P.D.I.D. officer Dial was permitted to testify concerning six prior incidents as set forth in subsection (3) of "Statement of the Case", supra, involving political expression alleged to have occurred in the context of P.L.P. activity. The statements were not probative of the existence of a conspiracy regarding the function of P.L.P, security; nor were they, in the main, relevant to encompassing individual Petitioners within the ambit of the alleged agreement. At two of the meetings, no Petitioner was alleged to be present (July 11, 1976; April ;13, 1977), and at another, only one (September 7, 1976). On two occasions, the statements alleged by Dial, or the carrying of signs, were not attributed to any particular



person. (June 10, 1977; May 23, 1976).

Signs bearing such slogans as "Death to Cop Assassins. Turn Rebellion Into Revolution" (June 10, 1977), or isolated statements regarding "Kill the Pigs" (September 7, 1976) amount to nothing more than offensive display or political hyperbole.

Even if uttered as understood by Dial, statements urging rebellion, or advocating the need for revolution, amount only to protected simple advocacy or abstract teaching. (July 18, 1977; April 13, 1977; July 11, 1976; May 23, 1976). None of the statements was made in immediate proximity to the events of June 18, 1977, or any other alleged unlawful act.

The California courts failed to draw careful distinctions between speech protected by the First Amendment, and prior incidents having a fair relationship to the alleged content of the conspiracy, i.e., the function of P.L.P. "security" and the use of



picket sticks. As a result, the jury's verdict was impermissibly tainted by reliance on political expression which should not have formed any part of the basis for liability for damages.

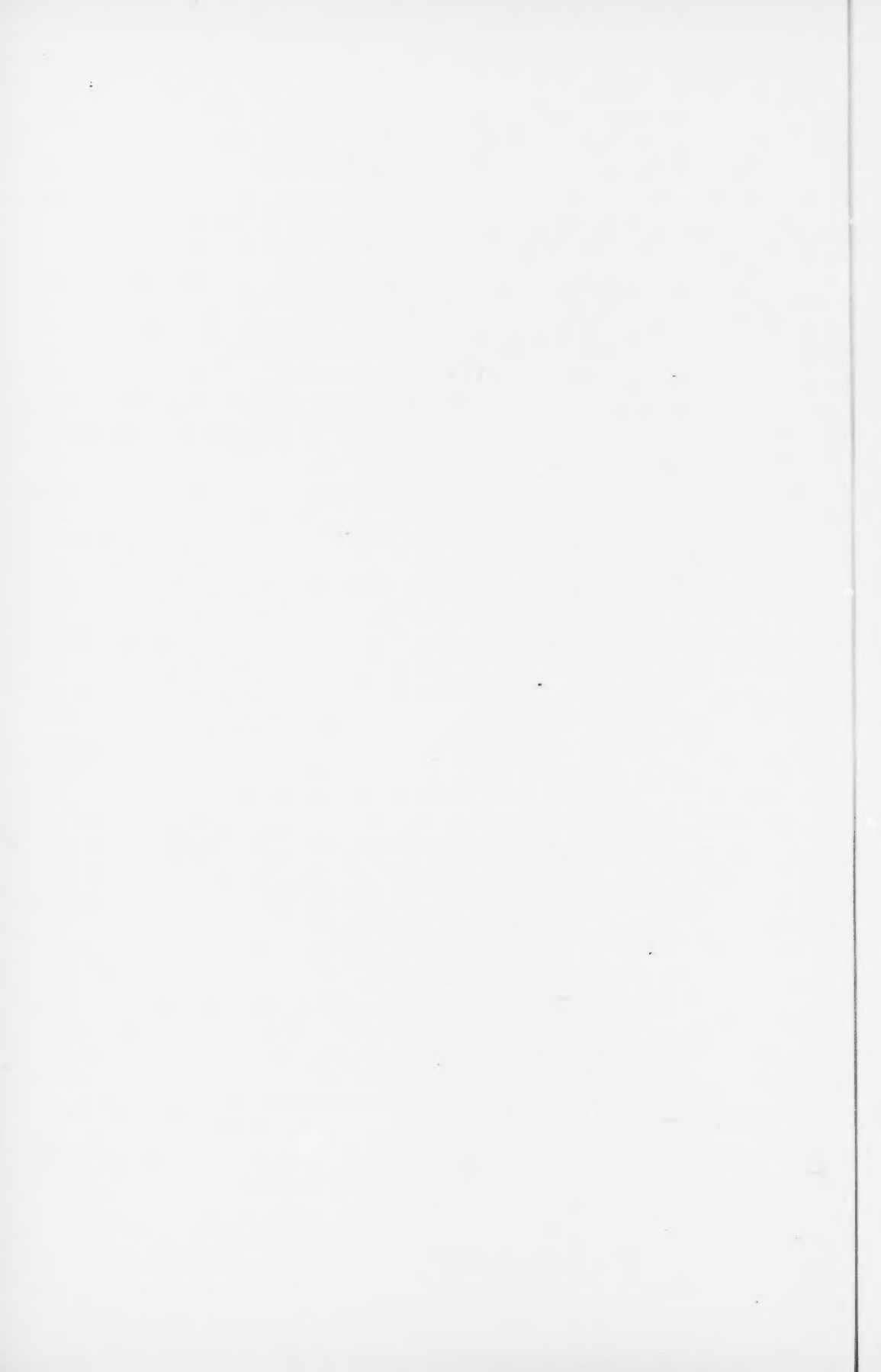
II. The State Court's Holding National P.L.P. Liable for Local Actions is in Direction Conflict With This Court's Decision in N.A.A.C.P. vs. Claiborne Hardware.

In N.A.A.C.P. v. Claiborne Hardware, supra, 458 U.S. 886, 931-932, this Court ruled that liability could not constitutionally be imposed on the N.A.A.C.P. as a national organization, absent a finding that it had authorized or ratified local representatives to commit or threaten acts of violence. The Court cited with approval the dissenting remarks of the late Justice Douglas, in N.A.A.C.P. vs. Overstreet (1966) 384 U.S. 118, 122:



"To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit.

At the outset of the present lawsuit, Respondents' complaint named the PROGRESSIVE LABOR PARTY as a defendant; there was no designation of the level of the organization to be sued. Respondents' also named as defendants Milton Rosen and Mort Scheer, referred to in later evidentiary proceedings as national leaders of P.L.P. Following the conclusion of Respondents' evidence at trial, Rosen, Scheer and P.L.P. moved for non-suit; the motion was granted as to Rosen and Scheer, but denied as to the national organization, despite the fact that no evidence had been introduced suggesting that any official of the national office had been present in California on June 18, 1977, participated in any aspect of planning the





local demonstration, or had any knowledge that it would take place.

The jury's special verdict found that Petitioner Hertz, along with Victor Guerrero, were "managerial agents" of P.L.P. and acting within the scope of their authority on June 18, 1977. The special verdict form did not indicate whether the query related to the Los Angeles Chapter of P.L.P. or to P.L.P. nationally, Liability of the national office of P.L.P. should have depended on a sufficient showing that Hertz, or Guerrero, was an agent of the national office, and acted within the scope of that agency in connection with the incidents of June 18.

While there was evidence involving Hertz and Guerrero in the June 18 incidents, there was no evidence introduced to show that either held any office in national P.L.P. The two were described as "West Coast" leaders, or Los Angeles leaders; however, there was no evidence introduced as



to nature of the organizational link between the national office and the Los Angeles affiliate.

The California Court of Appeal rested its holding on grounds that the "record is devoid of any proof that these (national and local) were distinct entities." In so doing, the appellate court failed to apply the criteria for liability of the national organization set forth in N.A.A.C.P. v. Claiborne Hardware, supra.

III. The Court of Appeal Failed To  
Apply the Strict Constitutional  
Tests Necessary to Impose  
Conspiracy Liability on  
Individual Petitioners.

In N.A.A.C.P. vs. Claiborne Hardware, supra, 458 U.S. 886, this court reviewed the principles applicable to finding individuals liable under a conspiracy theory:



Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims.

Id. at 921

\*

\*

\*

Moreover, the test of specific intent must be judged "according to strictest law". Noto v. United States (1961) 367 U.S. 290, 299.

It is clear from testimony at trial that the demonstration of June 18, 1977 encompassed lawful aims of political protest and efforts to gain support for organization of a labor union. Viewed in this light, the opinion of the California Court of Appeal fails to apply the strict tests of specific intent necessary before individuals associated with the demonstration could be held accountable for injuries to



Respondents.

The court's failure to evaluate sufficiency of evidence is apparent in its upholding liability as to Petitioner Sarmiento. There was no evidence indicating that Sarmiento struck anyone during the altercations; no evidence that he had attended any of the prior meetings or demonstrations introduced into evidence; and no evidence suggesting his membership in P.L.P. The court's reliance on a photograph showing Sarmiento in a "confrontational" stance, and its judgment that a jury would be supported in concluding that Sarmiento "joined in the conspiracy during the demonstration" is tantamount to sanctioning liability for mere presence.

Similarly, the imposition of liability upon Petitioner Mora, which the appellate found justified although Mora was not identified as a member of "security" or identified as having struck anyone in the altercations, evinces failure to apply the





required strict constitutional standards. Though the Court of Appeal notes that Mora attended one meeting at which it was alleged that it was decided "that security forces would be used to prevent arrests", the Court advances no showing that Mora assented to the "decision". While the Court indicates that Mora was in possession of a stick, this act in the course of a political demonstration, cannot, without more, indicate intent to further violent activity or unlawful aims.

The Court of Appeal noted that Dial identified Petitioners Hertz, Estrada, Amaya, Hankey, Guerrero, Quemada, Edgar Hernandez, Jose Hernandez, Martha Fernandez, Francesca Sautman and Barry Sautman, and Raul Fernandez as members of P.L.P. "security". The Court states that the identification with security alone would justify liability, but feels that liability is bolstered by the fact that all "were present when the officers were attacked".



Yet, of those persons, as the appellate court notes, only Jose Hernandez, Edgar Hernandez, and Pedro Guerrero were identified as having struck officers.

In fact, the court's opinion concedes that two of the alleged "security" members, Quemada and Estrada, may not have carried sticks on June 18. In fact, photographic evidence at trial showed that additional alleged security members may not have carried sticks. Estrada is shown holding a bullhorn (Ex. 145); but there is no evidence he held anything else; Petitiner Barry Sautman is carrying a rolled newspaper in two photos, but is never shown with a stick (Ex. 124, 162, 166, 170). His wife, Petitioner Francesca Sautman, is depicted as carrying a flag (Ex. 122), which in a later photo is shown on the ground, still attached to a stick (Ex. 139); in all other photographs, Francesca Sautman is shown without anything in her hands. (Ex. 128, 162, 166, 170).



Given the ambiguity of testimony concerning "security", the reality that persons in the demonstration had varying levels of organizational involvement, and the fact that the demonstration encompassed lawful goals, a review of the individual liabilities of Petitioners is warranted in this Court.

IV. The Trial Court's Finding of  
Contempt For Failure to Disclose  
or Name Political Associates  
Abridged First Amendment Rights  
and Deprived Petitioners of a  
Fair Trial.

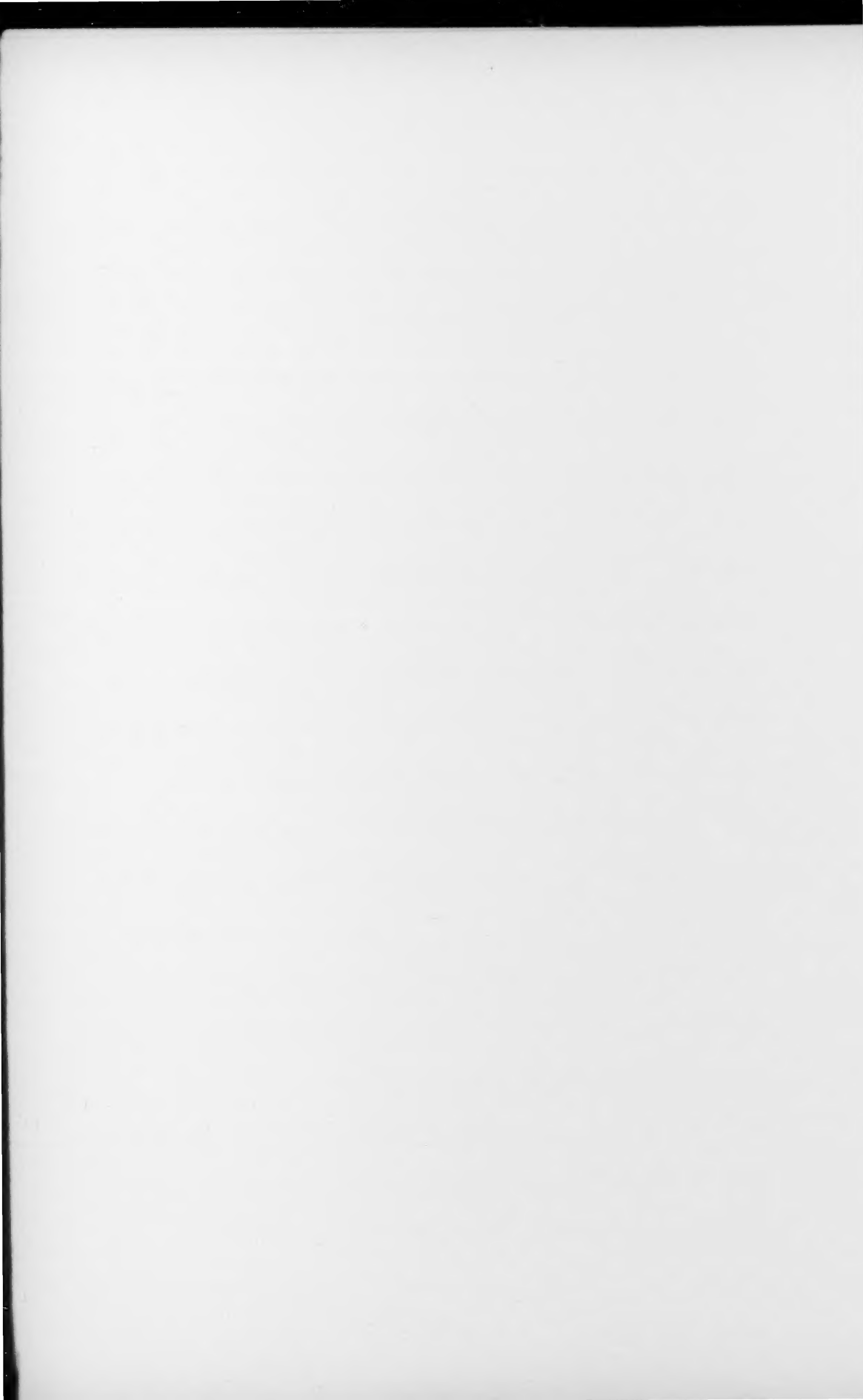
In N.A.A.C.P. ex rel Patterson (1958) 357 U.S. 449, 462-463, this court held that the First Amendment right of association protects against compelled disclosure of names of members of political associates, where such disclosure would constitute an effective restraint on freedom of



association; only a compelling state interest will suffice to overcome the protection and require disclosure.

There was no showing of any compelling state interest in the present case to justify the requirement of disclosure on pain of contempt or striking of testimony. The record in the case, in which Respondents relied on a police undercover agent, and which Hertz and Kennedy reasonably stated fears for adverse effects on parties who might be named, amply supported the need for protection against disclosure.

It is most significant that the present case involved in a lawsuit between private parties, and not any governmental investigation related to the need for internal security for self-preservation. (See: Uphaus v. Wyman (1959) 360 U.S. 72; Barerblatt v. United States (1959) 360 U.S. 109; DeGregory v. Attorney General of New Hampshire (1966) 383 U.S. 825. Though the court's action in requiring disclosure





itself constituted state action, disclosure in the present case would have served primarily the interests of Respondent in bolstering its case.

The Court of Appeal merely held that the question of membership in P.L.P. or C.A.R. was relevant to the issues raised by Respondents' complaint;; it did not rely on strict scrutiny of the governmental action for a compelling state interest.

V. Petitioners Were Subjected to a  
Prior Restraint of Freedom  
of Expression

In a striking down a noise ordinance lacking in provisions drawn so as to prevent arbitrary abuse to suppress expression, this court wrote:

/ / /

/ / /



The right to be heard is placed in the uncontrolled discretion of the Chief of Police. He stands awthwart the channels of communication as an obstruction which can only be removed after criminal trial and conviction and length review. A more difficult previous restraint is difficult to imagine....Loud speakers are today indispensable instrument of communication...."

Saia v. People of the State of New York (1948) 334 U.S. 558, 560-561.

The police admonition not to use a bullhorn in the present case constituted a prior restraint on freedom of expression.

#### CONCLUSION

For the foregoing reasons, Petitioners respectfully pray that this Petition for A Writ of Certiorari be granted.

---

STEWART C. POLLACK  
Counsel for Petitioners



APPENDIX  
TO PETITION  
FOR WRIT OF CERTIORARI



ORDER DENYING REVIEW  
AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, No. B014202

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
IN BANK

BRAZAS et al., Respondents,

v.

WAGNER et al., Appellants.

SUPREME COURT  
**FILED**

SEP 25 1986

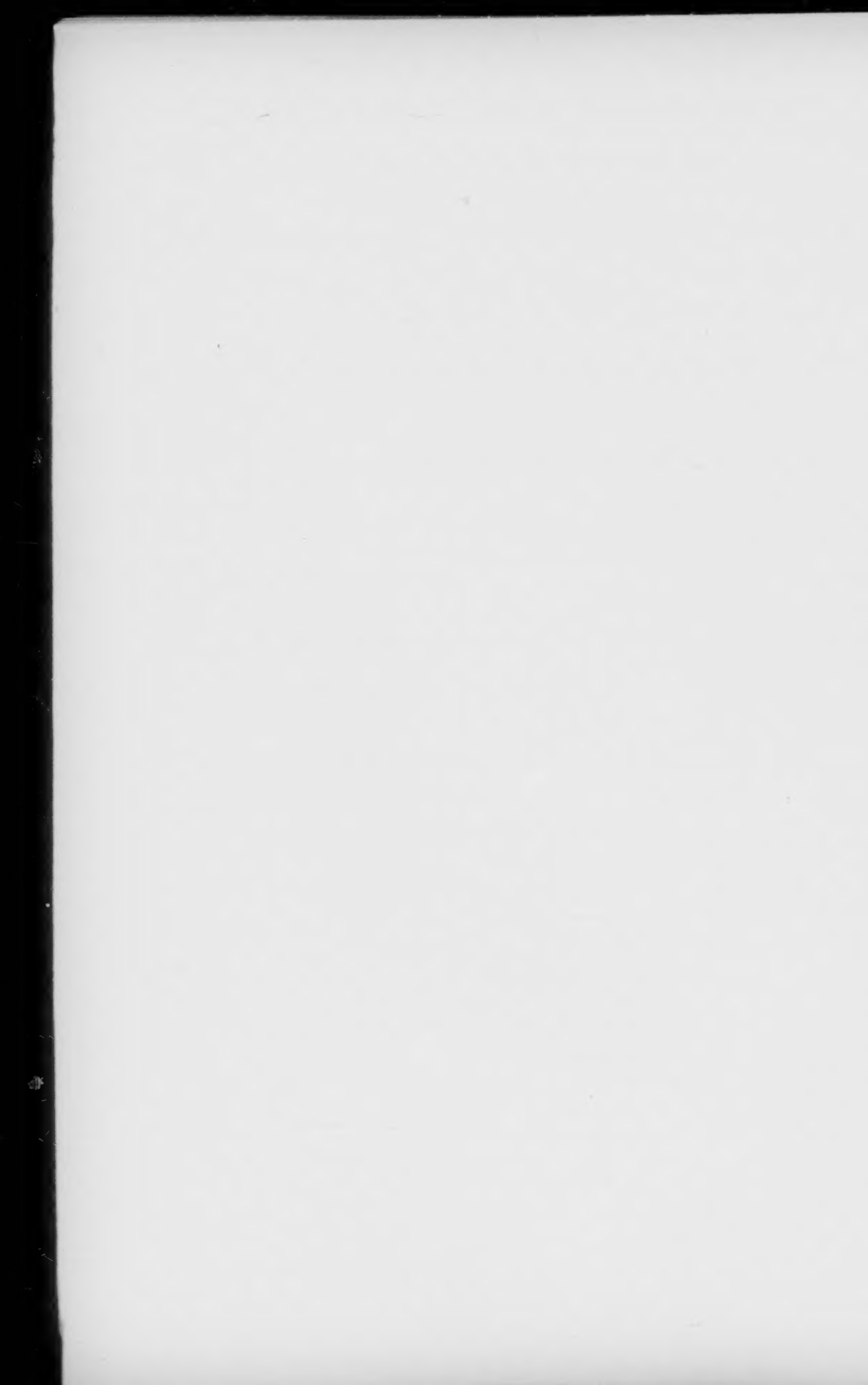
Laurence P. Gil, Clerk

DEPUTY

Appellants' petition for review DENIED.

*Bird*

Chief Justice





NOT FOR PUBLICATION

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

JOSEPH C. BRAZAS, et al.	)	No. B014202
	)	
Plaintiffs and Respondents,	)	(Super. Ct.
	)	No. C 204573)
	)	
v.	)	
	)	
JOHN WAGNER, et al.,	)	
	)	
Defendants and Appellants	)	

Defendants Barbara Hertz,  
John Wagner, Hugo Sarmiento, Raul Fernandez,



Barry Sautman, Francesca Sautman, Martha Tafoya Fernandez, Edgar Hernandez, John Hankey, Pedro Guerrero, William Quemada, Rolando Estrada, Frank Mora, Osar Amaya, Jose Ofelio Hernandez and the Progressive Labor Party (PLP), Appeal from the judgment entered pursuant to a jury verdict that awarded compensatory and punitive damages to plaintiff police officers Joseph C. Brazas, Craig M. Hrehor, Robert Martin, James O. Rigney, David G. Leaton, Rodger Burton, Ronald McGowin, Samuel Barron and Robert Leon.<sup>1/</sup> They contend:

"[I.] Evidence of prior meetings and demonstrations should have been excluded as irrelevant, or at least, because its prejudicial effect clearly outweighed its probative value. [II.] As to certain

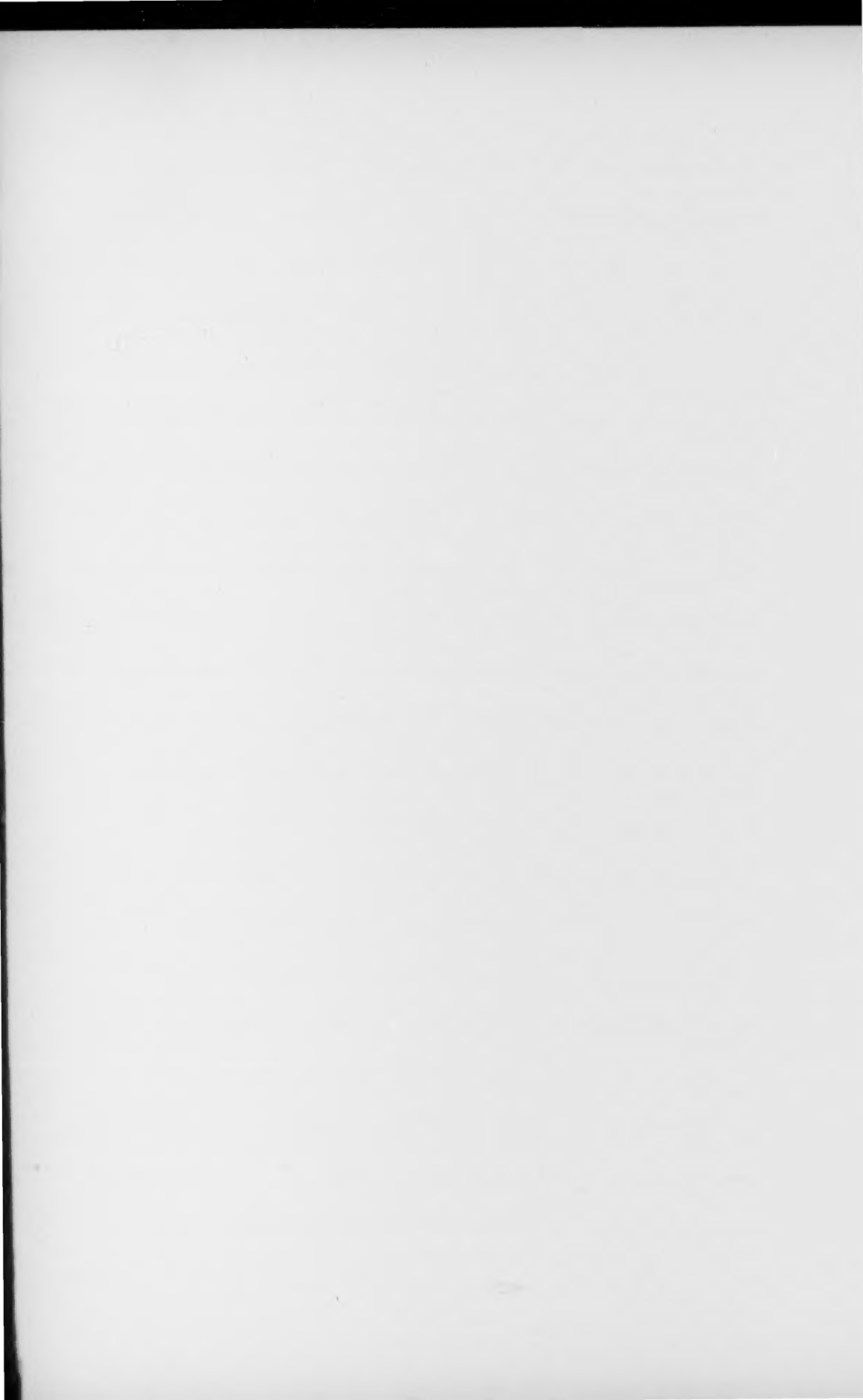
---

1. Plaintiffs received compensatory damages totalling \$213,053.42. In addition, each plaintiff was awarded punitive damages in the sum of \$10,000 from PLP, \$200 from Barbara Hertz and \$100 from each of the defendants.



defendants the evidence is insufficient to establish liability. [III] There is no basis for imposing liability on the Progressive Labor Party. [IV.] The evidence is insufficient to support the verdict for punitive damages assessed against defendant PLP and certain individual defendants. [V.] Court rulings permitting inquiry into [PLP] and CAR [Committee Against Racism] membership of defendants, and compelling such disclosure on pain of civil contempt, deprived appellants of associational rights guaranteed by the First Amendment, and of a fair trial and due process of law. [VI.] The trial court abused its discretion in striking the entire testimony of an important defense witness, thereby depriving the defense of a fair trial. [VII.] The firemen's rule bars recovery by plaintiffs."

On June 18, 1977, some 50 to 75 persons, including the individual appellants, participated in a demonstration



sponsored by PLP <sup>2/</sup> and CAR in Los Angeles' garment district. Shortly after they began their march, violence erupted as two Los Angeles police officers attempted to arrest one of them for allegedly violating a Los Angeles city ordinance regulating the use of amplified sound devices. Almost simultaneously with the attempted arrest, the demonstrator in question was lynched by his companions and the officers were attacked with 2"x2"x4' placard sticks. The police responded with their batons and order was restored within a matter of seconds.

Approximately one-half of the demonstrators dispersed, but the remainder regrouped, closed ranks, military fashion" and advanced in unison using a "drag step" until their movement was halted by a police skirmish line. At that point many of them assumed a "port-arms"

---

2. Though appellants disputed its veracity, testimony was received that PLP and CAR "are one and the same" and that "the Committee Against Racism is like a front group for the Progressive Labor Party."





position with their now placardless sticks. When they were ordered to drop their weapons and informed they were under arrest, appellant Hertz urged them to fight. She also appealed to spectators across the street to ". . . join the march and . . . kill the fascist pigs . . . ."

Five or six of the armed demonstrators moved towards police. One of them, appellant Jose Hernandez, swung at an officer and fighting broke out anew. It was contained within a short time, however, and 29 demonstrators were ultimately taken into custody.

The two altercations left a number of persons injured on each side. Most of the injuries inflicted upon respondents were relatively minor, e.g., abrasions, contusions, lacerations and a broken foot. Respondents Brazas and Hrehor, however, suffered serious head wounds as a result of

/ / / / /

/ / / / /

/ / / / /



3/

being savagely beaten. In fact, Hrehor, who

3. When Brazas observed one of the demonstrators "smash[] the back of Officer Hrehor's head" with a "baseball-type swing" he rushed over to the location" and "reached out to grab at the suspect with the club . . . ." As Brazas did so, he "was smashed in the back of the head." He poignantly described that blow and subsequent events as follows: "It drove me forward and dazed, and I turned to see where this was coming from. As I turned this way here, I was beaten again and again on this side of the face from one direction and smashed again from the other direction and I started falling. It just seemed--I couldn't believe it was happening. I just kept falling and I kept getting beat and smashed. I was driven to the ground. . . . [q] It was in slow motion. You are just going down. You say, 'Jesus, this can't be happening.' You don't think it is going to happen to you. . . . [q] I don't think I remember actually hitting the ground. I knew I had to get away. I had to crawl. I had to get away. . . . [q] I was on my hands and knees and I don't know which direction I was crawling. I knew I had to get out of there. The next thing I remember, and I don't know what happened, I don't know exactly what took place between the time I was smashed to the ground and I crawled out, I found myself next to a police car. My recollection was I tried to reach up and pull myself into the car. . . [q] Once I was in the car, I don't know how I got into the front seat of the car, if I was placed there or I crawled there. I know Officer Hrehor appeared and attempted to stop the bleeding in my head. . . . [q] He was also bleeding profusely. I mean blood was just gushing out of his head and he took his shirt off and wrapped it around my head to try to stop the bleeding.. . [q] I couldn't see anything. Blood had filled my face and I had no idea where I was other than the police car. . . ."



was most severely incapacitated as a result of the incident, has never returned to full duty and is currently "assigned to the Traffic Court Building" where "[b]asically all [he does] is sit at a table with the city attorneys in the courtroom and make sure all of the witnesses show up."

In considering appellants' various contentions, we stress that our limited role as a reviewing court does not permit us to reverse a judgment because we might have made a different evidentiary ruling had we been conducting the trial or because we might have been persuaded by appellants' evidence had we been triers of fact. Neither can we justify a reversal on the ground that had we the power of a trial judge, we might have granted a new trial or reduced the damage awards. Rather, it is well settled that our sole task begins and ends with the determination of whether the trial court rulings constituted a prejudicial abuse of discretion (Baggett v.



Gates (1982) 32 Cal.3d 128, 142-143) and whether there is substantial evidence, contradicted or uncontradicted, which will support the judgment. (Gray v. Don Miller & Associates, Inc. (1984) 35 Cal.3d 498, 503, and cases cited therein.)

Perhaps it is also worthy of mention at this point that while we recognize liability may not be imposed upon appellants solely because of their association with PLP, "[t]he First Amendment does not protect violence." (NAACP v. Claiborne Hardware Co. (1982) 458 U.S. 886, 916.) Consistent with this precept, liability may be imposed by reason of such association where it has been established "that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims. . . ." (Id. at p. 920. See also Scales v. United States (1961) 367 U.S. 203; Noto v. United States (1961) 367 U.S. 290.)

At trial respondents sought to establish that on June 18 appellants "were





acting in concert . . . pursuant to an understanding and agreement between all of them that if the police should attempt to arrest anyone of them that they would respond by assaulting and battering the officers and freeing any person arrested from police custody. . . ."

In furtherance of that theory the court permitted respondents to introduce evidence of a number of other PLP and CAR activities which had occurred prior to June 18. Without discussing each of these events separately, we note they included meetings explaining PLP's philosophy that the violent overthrow of the United States government is inevitable, observations on the need to incite rebellion and engage in overt acts of violence including killing police, explanations on the use of the placard sticks for offensive as well as defensive purposes, discussions on the role of "security" in preventing the arrests of demonstrators and actual training in the

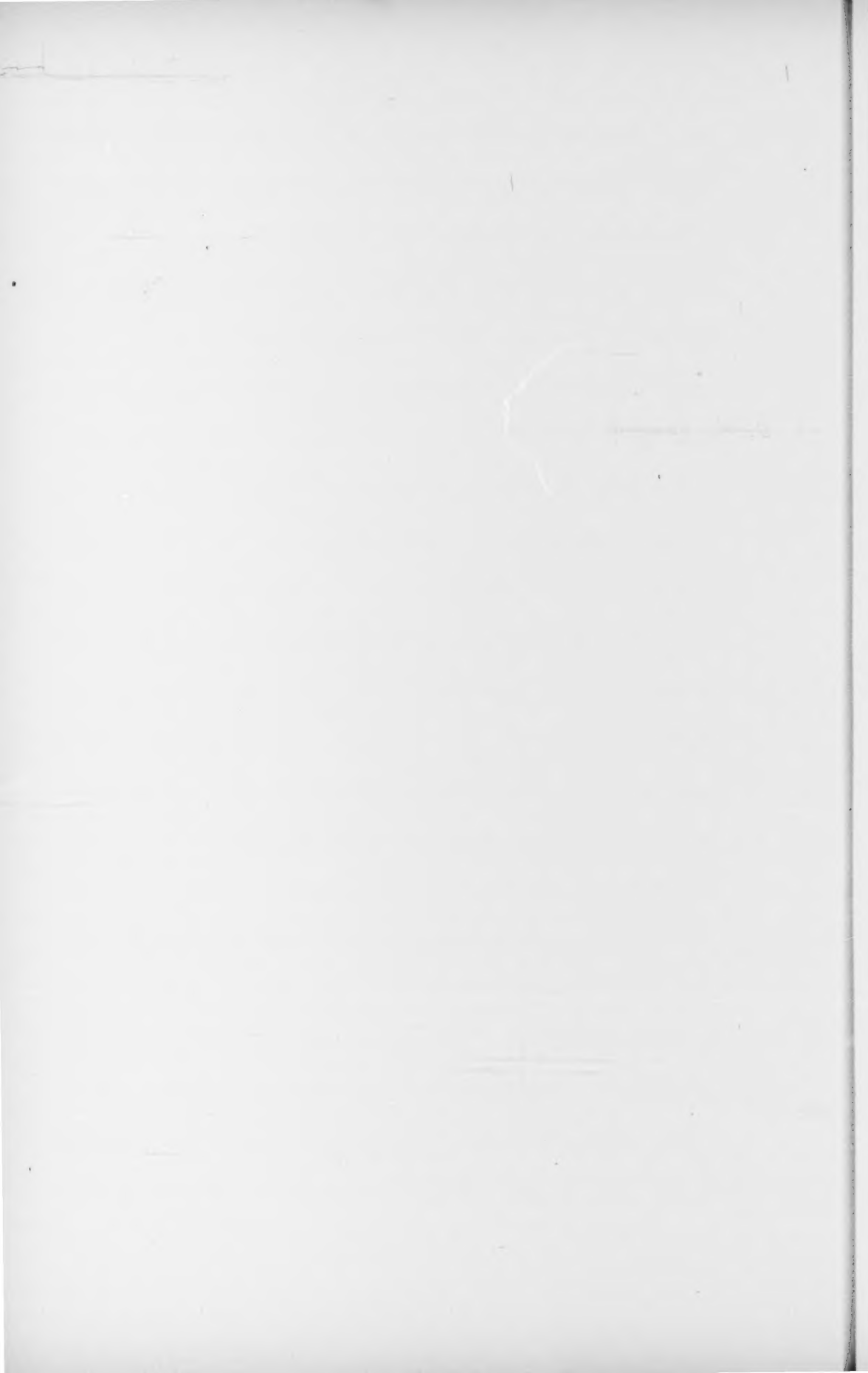


techniques to be utilized for achieving that end. Additional evidence was introduced regarding a number of specific incidents in which placards actually had been removed from sticks during demonstrations involving confrontational situations. To a greater or lesser degree all of this evidence was relevant to the question of whether or not a civil conspiracy existed and, if so, the identity of those individuals who had tacitly or expressly been involved therein. Whether the asserted prejudicial effect of such evidence so far outweighed its probative value as to require its exclusion was a decision which rested in the sound discretion of the trial court. Appellants' first contention must therefore be rejected.

Viewed in the light most favorable to the judgment, as required by the rules on appeal, appellants' contention that there was insufficient evidence to establish liability as to certain defendants,

///

///



including PLP,<sup>4/</sup> is unpersuasive. In 1976

Constance Milazzo Dial joined PLP and CAR as part of her assigned duties as a member of the Los Angeles Police Department's Public Disorder Intelligence Division. She attended four to five PLP activities per week between May 23, 1976, and June 18, 1977, and became a member of PLP "security" in the latter part of 1976. In explaining its role during demonstrations, Dial testified "Security was instructed to protect the integrity of the march which meant that they would not allow the speaker with the bullhorn to be interfered with. They would not allow the police to arrest

---

4. Appellants, quite improperly, have included Annie Newman in their discussion of this issue. Our independent examination of the superior court file Cal. Rules of Court, rule 12(a)) discloses that although she was named in the notice of appeal, she thereafter entered into a settlement agreement with respondents and her appeal was abandoned.



anyone from the march. . . . And to prevent that, they would use the 2 x 2 sticks that they carried with the placards as weapons.<sup>5/</sup> She further averred that the role of "security" in preventing arrests and the use of sticks as weapons had been discussed at several meetings she attended.

Dial identified appellants Hertz, Estrada, Amaya, Hankey, Guerrero, Quemada, Edgar Hernandez, Jose Hernandez, Martha Fernandez, Raul Fernandez, Francesca Sautman and Barry Sautman as members of PLP "security."<sup>6/</sup> The evidence of these

---

5. A number of appellants conceded the existence of "stick training" but asserted it was intended only to be used defensively to protect themselves in the event of attacks by hostile groups such as the Nazis or Ku Klux Klan.

6. Understandably, appellants do not challenge the sufficiency of the evidence as to Hertz who is an acknowledged leader of PLP for the West Coast and who actively incited other demonstrators to fight on June 18. Neither do they aver liability was improperly imposed upon Edgar Hernandez, Jose Hernandez, Guerrero or even Wagner, who seemingly was not a member of the security forces. Each of the latter appellants was among those demonstrators who actually battered the officers.





individuals' involvement in a common plan to prevent arrests, utilizing violence where necessary, is not limited to their association with the security force. Nonetheless that connection would be sufficient in and of itself to support a finding they had conspired to commit a wrongful act and to hold them liable when that act and to hold them liable when that act was committed, whether or not they directly participated in it. In this case, however, each of these appellants was present when the officers were attacked and, with the possible exception of Quemada and Estrada, were carrying sticks.

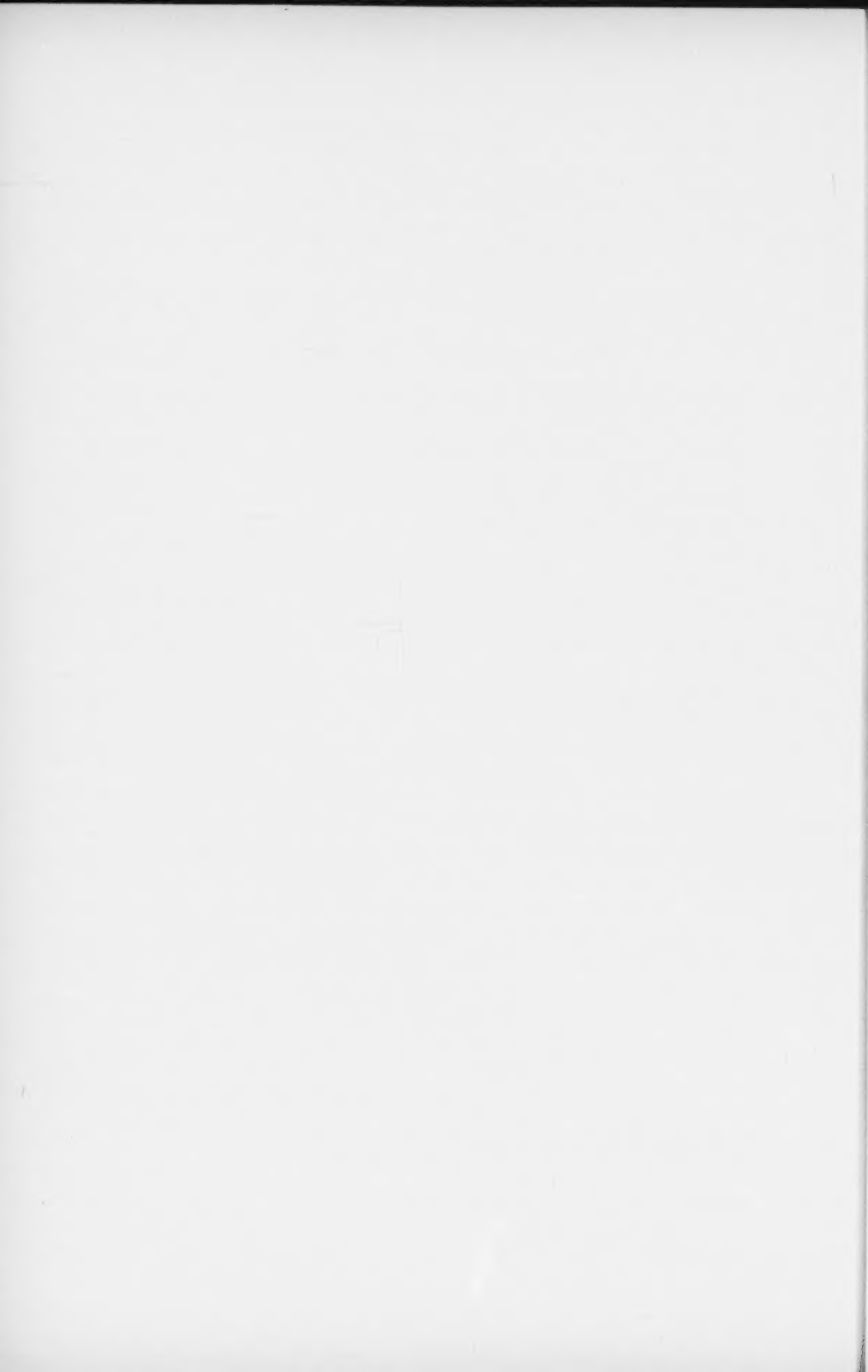
Appellants also urge there was not ample evidence to impose liability upon Mora. Although he was never identified as a member of "security," he did attend a meeting where, after much discussion, it was decided security forces would be used to prevent arrests. This, coupled with his own possession of a stick when he was arrested



on June 18, is sufficient to support a finding that he had Joined in the conspiracy.

Similarly, while no evidence was presented identifying Sarmiento as a member of PLP or linking him to any of that organization's prior activities, photographs of the June 18 demonstration which were introduced at trial depict him at both locations where violence erupted. At the first site he has clearly adopted a confrontational stance, whether for offensive or defensive purposes was a question for the jury to resolve in the light of all the other evidence. Such a record, though certainly not conclusive, is sufficient to support a finding by the trier of fact that, at a minimum, he had joined in the conspiracy during the demonstration.

We must also reject appellants' contention that liability may not be imposed upon the "national organization of PLP," as opposed to its "local branch" in Los



Angeles. Our record is devoid of any proof that these were, in fact, distinct legal entities. Obviously if there is but one PLP, that organization may, and must, "be held responsible for the acts of its agents throughout the country that are undertaken within the scope of their actual or apparent authority. . . ." (NAACP v. Claiborne Hardware Co., *supra*, 458 U.S. at p. 930; fn. omitted.) Somewhat ironically, when potential confusion over this question surfaced well into this ten-week trial it was appellants' own obstructionist tactics which prevented meaningful inquiry into it.

Appellants' claims regarding the propriety of the punitive damage award entered against PLP are likewise unavailing. So far as the record before us reveals, appellants made no effort either at trial or during their subsequent motion for new trial to present any financial data as to PLP's resources, either locally or in New York. In fact, when Hertz was questioned on this subject at trial, she indicated she did not



know the balance of PLP's Los Angeles bank account, estimated the value of personal property located at the organization's headquarters in Los Angeles to be \$500 and refused to answer any questions regarding the assets of PLP "in its national scope."

As the court in Vossler v. Richards Manufacturing Co. (1983) 143 Cal.App.3d 952, pointed out, the trend of modern decisions is "to require the wrongdoer to demonstrate at the trial level that a particular award of punitive damages will exact too great a penalty because of his financial condition. Presumably, in the great majority of cases it will be to the plaintiff's advantage to show that the defendant is capable of absorbing a substantial penalty, and in those situations where it is otherwise, the defendant will be motivated to show its penury. The defendant is in the best position to provide the most accurate data concerning its financial condition, and need not decide whether to introduce such





information until after the plaintiff has presented a sufficient case for the punitive damages issue to go to the trier of fact. If the defendant wishes to challenge an award of exemplary damages on appeal, its production of financial data will provide mandated by the Supreme Court in Neal and other cases." (Id., at p. 964.)

Appellants further assert that the punitive damages assessed against Francesca and Barry Sautman, Hankey, Raul and Marta Fernandez, Amaya, Mora, Sarmiento, Estrada and Quemada should be reversed. Since we have previously discussed the participation of these individuals in the attacks upon respondents, it is unnecessary to repeat it here. We have examined the evidence carefully and are unable to declare it inadequate as a matter of law to sustain the jury's finding that each of them was actuated by malice.

The trial court's ruling permitting inquiry into appellants' membership or association with PLP and/or CAR was neither



irrelevant nor violative of their constitutional rights. "[A]s with all other First Amendment rights, the right of associational privacy is not absolute ... ." (Britt v. Superior Court (1978) 20 Cal.3d 844, 855.) In light of the conspiracy allegations, the inquiry undertaken here involved "a narrow question having an important connection with the lawsuit." (Bodenheimer v. Superior Court (1980) 108 Cal.App.3d 885, 889, cited with approval in Davies v. Superior Court (1984) 36 Cal.3d 291, 304.) Under such circumstances, disclosure might right be compelled. (Britt v. Superior Court, supra, 20 Cal.3d at p. 859.)

Similarly the trial court did not err in striking the testimony of Ruth Kennedy. Kennedy testified on direct that in March or April 1977 she had attended a security session at which she "practiced disarming an armed person" posing as a Nazi. When asked during cross-examination where the meeting



took place, she refused to answer "based on [her] First Amendment right of association." The trial court quite accurately observed, ". . . I can't think of a single issue hardly in this case that is more relevant than what security practices took place, where they took place, when they took place and who was present. . . . She has testified respecting a specific event that is very relevant in time, and type and style to the issue in this case and I am not going to permit her to sit here now and say she is not going to answer questions on cross-examination regarding it." Kennedy persisted in her position after having been afforded an opportunity to discuss the matter with counsel. At that time the court granted a motion "to strike her testimony entirely from the record." We cannot say this decision constituted an inappropriate exercise of discretion. (People v. McGowan (1926) 80 Cal.App. 293, 296-299.)

Contrary to appellants' final



contention, the fireman's rule does not bar respondents' recovery. In 1982, prior to the commencement of the instant trial, Labor Code section 3852 was amended by urgency legislation effective April 5, 1982, to provide in pertinent part: ". . . (b) Notwithstanding statutory or decisional law to the contrary, any person who knows or should have known of the presence of a peace officer or firefighter is responsible not only for the results of the person's willful acts, but also for any injury occasioned to the peace officer or firefighter by the person's want of ordinary care or skill in the management of the person's property or person, which occurs after the person knows or should have known of the presence of the peace officer or firefighter, except to the extent that the comparative fault of the peace officer or firefighter contributes to the injury . . . ." (Stats. 1982, ch. 149, § 1, p. 492)

Thereafter section 3852 was again





amended to delete subdivision (b), which was incorporated, as modified and clarified, in Civil Code section 1714.9 enacted at the same time. (Stats. 1982, ch. 258, §§ 1, 2, pp. 836-837.) That section specifies in relevant part:

"(a) Notwithstanding statutory or decisional law to the contrary, any person is responsible not only for the results of that person's willful acts causing injury to a peace officer, firefighter, or any emergency medical personnel employed by a public entity, but also for any injury occasioned to that person by the want of ordinary care or skill in the management of the person's property or person, in any of the following situations:

"(1) Where the conduct causing the injury occurs after the person knows or should have known of the presence or the peace officer, firefighter, or emergency medical personnel.

"(2) Where the conduct causing the injury occurs after the person knows or should have known of the presence of the peace officer, firefighter, or emergency medical personnel, violates a statute, ordinance, or regulation, and was the proximate cause of an injury which the statute, ordinance, or regulation was designed to prevent, and the statute, ordinance, or regulation was designed to protect the peace officer, firefighter, or emergency medical personnel.

"As used in this subdivision, a statute, ordinance, or regulation prohibiting resistance or requiring a person to comply with an order of a peace officer



or firefighter is designed to protect the peace officer, firefighter, or emergency medical personnel.

"(3) Where the conduct causing the injury was intended to injure the peace officer, firefighter, or emergency medical personnel. . . ."

Appellants' conduct clearly falls within the scope of these enactments, which were ". . . remedial in nature and intended by the Legislature to be applied at the earliest possible time, including application to all cases not then finally decided." (City of Redlands v. Sorensen (1985) 176 Cal.App.3d 202, 212.)



SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSEPH BRAZAS, et al., ) CASE NO. C 204 573  
 )  
 Plaintiffs, ) JUDGMENT ON JURY  
 ) VERDICT  
 vs. )  
 )  
 JOHN WAGNER, et al., )  
 )  
 Defendants. )  
 )

THIS CAUSE came on regularly for trial on June 15, 1982. Michael P. Stone appeared as counsel for the plaintiffs. David Weitzman and Leone Hankey appeared as counsel for the defendants. Thereupon a jury of twelve persons was duly accepted, impaneled, and sworn to try said cause. Witnesses on the part of the plaintiffs and the defendants were duly sworn and examined.

Whereupon, after hearing the evidence, the arguments of counsel, and instructions of the Court, the cause was submitted to the



jury, who retired to deliberate upon its verdict, and subsequently returned to Court and then rendered their special verdict in favor of the plaintiffs and against the defendants, and assessed damages in the amounts specified hereafter.

WHEREFORE, by reason of the law and the premises aforesaid,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: 1. Plaintiffs Joseph C. Brazas, Craig M. Hrehor, Robert Martin, James O. Rigney, David G. Leaton, Rodger Burton Ronald McGowin, Samuel Barron, and Robert Leon have and recover from defendants Progressive Labor Party, Barbara Hertz John Wagner, Hugo Sarmiento, Raul Fernandez, Barry Sautman, Francesca Sautman, Marta Tafoya Fernandez, Annie Newman, Edgar Hernandez, John Hankey, Pedro Guerrero, William Quemada, Rolando Estrada, Frank Mora, Oscar Amaya, and Jose O. Hernandez, the sum of Two Hundred Thirteen Thousand, Fifty Three dollars and Forty-Two cents





(\$213,053.42) as compensatory damages apportioned as follows:

Joseph C. Brazas	\$ 33,022.96
Craig M. Hrehor	\$167,934.08
Samuel Barron	\$ 936.55
David Leaton	\$ 470.23
Robert Leon	\$ 4,237.24
Ronald McGowin	\$ 335.00
James Rigney	\$ 1,177.60
Rodger Burton	\$ 280.60
Robert Martin	\$ 4,659.16

2. Each plaintiff aforesaid have and recover punitive damages from defendant Progressive Labor Party in the sum of Ninety Thousand Dollars (\$90,000.00), apportioned Ten Thousand Dollars (\$10,000.00) to each such plaintiff.

3. Each plaintiff aforesaid have and recover punitive damages from defendant Barbara Hertz in the sum of Two Hundred Dollars (\$200.00) to each plaintiff.

4. Each plaintiff aforesaid have and



recover punitive damages from each defendant  
aforesaid except defendants Barbara Hertz  
and Progressive Labor Party. Each such  
defendant to pay to each plaintiff the sum  
of One Hundred Dollars (\$100.00).

5. Plaintiffs have and recover their  
costs of suit, in the amount of \$3,115.40.

Dated: August 23, 1982

HONORABLE NANCY B. WATSON  
JUDGE OF SUPERIOR COURT

/ / / / /

/ / / / /



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JOSEPH C. BRAZAS, et al.,	)	
	)	
Plaintiffs,	)	CASE NO. C 204 573
	)	
vs.	)	<u>SPECIAL VERDICT</u>
	)	
JOHN WAGNER, et al.,	)	
	)	
Defendants	)	
	)	

---

We, the jury in the above-entitled case, find the following Special Verdict on the issues submitted to us.

ISSUE NO. 1.

Was there a conspiracy on the part of any of the defendants to commit a wrongful act?

Answer "yes" or "no".

Answer: Yes.



If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 4 and do not answer Issues Nos. 2 and 3.

ISSUE NO. 2.

Pursuant to such conspiracy, did any of the defendants commit a wrongful act which caused damage to one or more of the plaintiffs?

Answer "yes" or "no".

Answer: Yes.

If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 4 and do not answer Issue No. 3.

ISSUE NO. 3.

Place a "yes" in the space provided opposite each of the following persons if you find that such a person was a conspirator, and a "no" for any person who was not a conspirator.

Victor Guerro

Yes





Barbara Hertz	Yes
John Wagner	Yes
Hugo Sarmiento	Yes
Raul Fernandez	Yes
Barry Sautman	Yes
Francesca Sautman	Yes
Marta Tafoya Fernandez	Yes
Annie Newman	Yes
Edgar Hernandez	Yes
John Hankey	Yes
Pedro Guerrero	Yes
William Quemada	Yes
Rolando Estrada	Yes
Frank Mora	Yes
Oscar Amaya	Yes
Jose O. Hernandez	Yes

ISSUE NO. 4.

Did any of the persons, about whom you answered "no" in Issue No. 3, assault and batter any of the plaintiffs, or aid and abet such assault and battery?

Answer "yes" or "no".

Answer:



If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 6.

ISSUE NO. 5.

In the spaces below, write in the name of each person for whom you answered "no" in Issue No. 3, but whom you find did assault or batter any of the plaintiffs, or did aid and abet such assault and battery.

---

---

If you listed any names in this issue, go on to the next issue.

ISSUE NO. 6.

In the spaces below, write in the name of each plaintiff you find was assaulted and battered, under "plaintiffs". Opposite each such plaintiff's name, write in the names of each person you find did assault and batter, or did aid and abet such assault and battery of each plaintiff listed.



Plaintiffs      Persons who assaulted and  
   battered or aided and  
   abettred

---

---

ISSUE NO. 7.

Do you find that any of the plaintiffs are entitled to an award of compensatory damages as a result of assault and battery committed upon him or them?

Answer "yes" or "no".

Answer: Yes.

If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 9.

ISSUE NO. 8.

In the spaces below, write in the name of each plaintiff to whom you award compensatory damages. Enter the amount of each award opposite that plaintiff's name.

<u>Plaintiff</u>	<u>Amount of Damages</u>
Joseph C. Brazas	\$33,022.96



Craigh M. Hrehor	\$167,934.08
Samuel Barron	\$936.055
David G. Leaton	\$470.23
Robert Leon	\$4,237.24
Ronald McGowin	\$335.00
James Rigney	\$1,177.60
Rodger Burton	\$280.60
Robert Martin	\$4,659.16

ISSUE NO. 9.

At the time of the events of June 18, 1977, out of which this case arose, was Victor Guerrero the agent of The Progressive Labor Party?

Answer "yes" or "no".

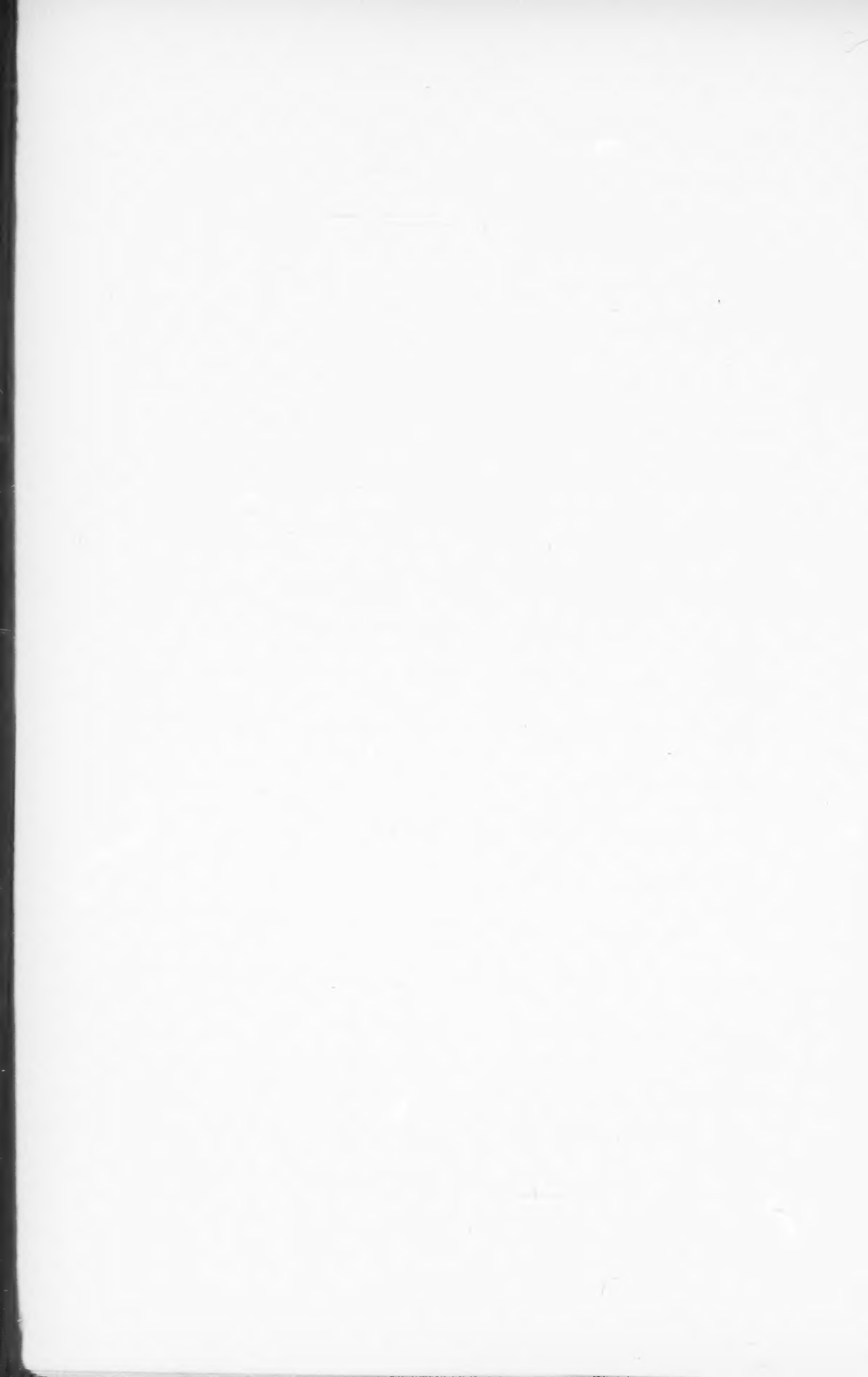
Answer: Yes

If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 11.

ISSUE NO. 10.

At that time was Victor Guerrero acting within the scope of such agency?

Answer "yes" or "no".





Answer: Yes.

ISSUE NO. 11.

At the time of the events of June 18, 1977, out of which this case arose, was Barbara Hertz the agent of The Progressive Labor Party?

Answer "yes" or "no".

Answer: Yes.

ISSUE NO. 12.

At that time was Barbara Hertz acting within the scope of such agency?

Answer "yes" or "no".

Answer: Yes.

ISSUE NO. 13.

Were any of the individual defendants guilty of malice?

Answer "yes" or "no".

Answer: Yes.

If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 15.



ISSUE NO. 14.

What amount of punitive damages, if any, do you assess against any individual defendant, by reason of his or her malice, in favor of any individual plaintiff, for the sake of example and by way of punishment?

Enter the name of each such defendant below in the left column. Enter the name of the plaintiff in whose favor you assess the award in the middle column. Enter the amount of each such award in the right column. You may find an individual defendant liable for punitive damages to more than one plaintiff. Likewise, more than one defendant may be liable for punitive damages to the same plaintiff. Thus, a particular defendant's or plaintiff's name may appear more than once in the columns.

<u>Defendant</u>	<u>In Favor of Plaintiff</u>	<u>Amount</u>
------------------	------------------------------	---------------

We, the jury assess punitive damages as against each of the following named defendants.



John Wagner	\$100.00
Hugo Sarmiento	\$100.00
Raul Fernandez	\$100.00
Barry Sautman	\$100.00
Francesca Sautman	\$100.00
Marta T. Fernandez	\$100.00
Annie Newman	\$100.00
Edgar Hernandez	\$100.00
John Hankey	\$100.00
Pedro Guerrero	\$100.00
William Quemada	\$100.00

ISSUE NO. 14.

What amount of punitive damages, if any, do you assess against any individual defendant, by reason of his or her malice, in favor of any individual plaintiff, for the sake of example and by way of punishment?

Enter the name of each such defendant below in the left column. Enter the name of the plaintiff in whose favor you assess the award in the middle column. Enter the amount of each such award in the right



column. You may find an individual defendant liable for punitive damages to more than one plaintiff. Likewise, more than one defendant may be liable for punitive damages to the same plaintiff. Thus, a particular defendant's or plaintiff's name may appear more than once in the columns.

<u>Defendants</u>	<u>In Favor of Plaintiff</u>	<u>Amount</u>
B. Hertz	Joseph C. Brazas	\$200.00
B. Hertz	Craig M. Hrehor	\$200.00
B. Hertz	Samuel Barron	\$200.00
B. Hertz	David G. Leaton	\$200.00
B. Hertz	Robert Leon	\$200.00
B. Hertz	Ronald McGowin	\$200.00
B. Hertz	James Rigney	\$200.00
B. Hertz	Rodger Burton	\$200.00
B. Hertz	Robert Martin	\$200.00
Rolanda Estrada		\$100.00
Frank Mora		\$100.00
Oscar Amaya		\$100.00
Jose O. Hernandez		\$100.00

In favor of each of the following named plaintiffs.





Joseph C. Brazas

Craig M. Hrehor

Samuel Barron

Robert Leon

Ronald McGowin

James Rigney

Rodger Burton

David G. Leaton

Robert Martin

ISSUE NO. 15.

Was Victor Guerrero a managing agent of  
The Progressive Labor Party at the time of  
the events out of which this case arose?

Answer "yes" or "no".

Answer: Yes.

If you answered this issue "yes",  
answer the next issue. If you answered this  
issue "no", go on to Issue No. 17.

ISSUE NO. 16.

Was Victor Guerrero guilty of malice?

Answer "yes" or "no".

Answer: Yes.



ISSUE NO. 17.

Was Barbara Hertz a managing agent of The Progressive Labor Party at the time of the events out of which this case arose?

Answer "yes" or "no".

Answer: Yes.

If you answered this issue "yes", answer the next issue. If you answered this issue "no", go on to Issue No. 19.

ISSUE NO. 18.

Was Barbara hertz guilty of malice?

Answer "yes" or "no".

Answer: Yes.

ISSUE NO. 19.

If you answered Issue No. 16 or Issue No. 18 "yes", answer this issue. If you answered "no" to both issues Nos. 16 and 18, you have answered all applicable issues.

What amount of punitive damages, if any, do you assess against The Progressive Labor Party, in favor of any individual plaintiff, for the sake of example and by



way of punishment?

Enter the name of each plaintiff to whom you award punitive damages, and the amount of each award, opposite each such plaintiff's name.

<u>Plaintiff</u>	<u>Amount</u>
Joseph C. Brazas	\$10,000.
Craig M. Hrehor	\$10,000.
Samuel Barron	\$10,000.
David G. Leaton	\$10,000.
Robert Leon	\$10,000.
Ronald McGowin	\$10,000.
James Rigney	\$10,000.
Rodger Burton	\$10,000.
Robert Martin	\$10,000.

DATED: Aug. 19, 1982

---

Foreman



Summary and Discussion of the Trial  
Court's Judgment of Non-suit As to  
Petitioner's Fourth Cause of Action  
[42 U.S.C. §§ 1985 (2) and (3)]

---

The non-suit was entered under California Code of Civil Procedure §581c, which provides, in part: "(a) After the plaintiff has completed his or her opening statement, or the presentation of his or her evidence in a jury trial, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a judgment of non-suit."

In his opening statement, counsel had in fact stated that officer Dial, of P.D.I.D., was providing almost daily information to the L.A.P.D. concerning P.L.P., pursuant to a plan to undermine P.L.P.'s activities; that negative information concerning P.L.P. was communicated to the individual officers at roll call on June 18, chiefly by Sgt.





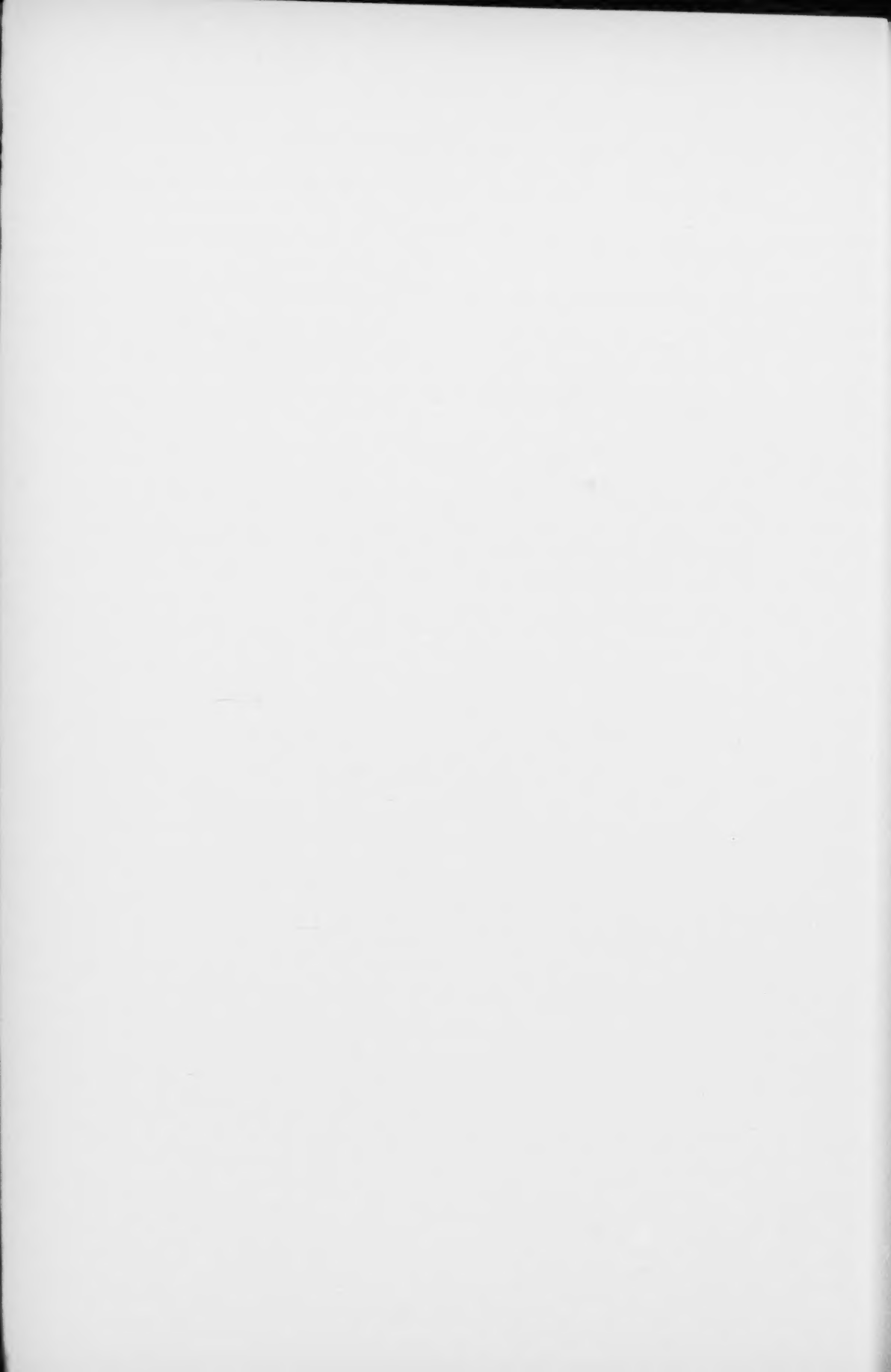
Brazas, a Respondent herein; and that, by implication, a plan arose to preclude the demonstrators' use of sound equipment, and thereafter to use sound ordinance violations as pretexts to disrupt the demonstration and arrest its leaders.

As the case developed, evidence introduced at trial could have supported conclusions that P.D.I.D. had sent operatives into P.L.P. since the mid-70's; that some information regarding P.L.P. was discussed at roll call on June 18; that Sgt. Brazas had some prior knowledge of P.L.P.; and that Dial had some prior knowledge of Brazas. Above all, the evidence could have supported a conclusion that Sgts. Brazas and Woodward, and officer Martin undertook the initial arrest even though sound equipment was being utilized by demonstrators in a lawful manner.

In making its ruling, the trial court was apparently influenced as much by the fact



that the City of Los Angeles and its police department had not effectively been brought into the action (See note (1), supra) as by any deficiencies in counsel's statement. The trial court's ruling was addressed by Petitioners' motion for a new trial, denied on September 28, 1982; but the potential due process issues implicated were not raised or decided in the California Court of Appeal.



JURY INSTRUCTION EMBODYING LOS ANGELES NOISE

ORDINANCE

To constitute reasonable cause for an arrest for a violation of Section 115.02 of the Los Angeles Municipal Code. The evidence must establish that:

1. The person arrested was using a sound amplification device: and

2. That the sound was audible at a distance in excess of 200 feet from the sound equipment. or that the sound was loud and raucous or unreasonably jarring, disturbing, annoying or a nuisance to reasonable persons of normal sensitiveness within the area of audibility.

If you find from all of the evidence that the foregoing facts are true, you must find that there was reasonable cause to arrest such person.

If you find that such facts are not true, you must find that there was not reasonable cause to arrest such person.



PETITIONERS' JURY INSTRUCTION REFUSED BY  
TRIAL COURT

Loudspeakers are today indispensable instruments of effective public speech. An absolute ban on the use of loudspeakers violates the First Amendment of the Constitution. However, municipalities may impose reasonable regulations as to time, place and volume.

Authorities:

Wollam v. City of Palm Springs 59 Ca.  
(sic) 2d 276, 29 Cal. Rptr. 1 (1963)

Saia v. New York (1948) 334 U.S. 558

Refused - Watson

First sentence argumentative.  
C-C will not agree to strike first  
sentence -

Watson

(Clerks Transcript, p. 362)





PORTION OF PETITIONERS' BRIEF IN THE  
CALIFORNIA COURT OF APPEAL

a.

The Attempted Arrest of  
GUERRERO Was Illegal.

The constitution guarantees freedom of speech, which entails communication and hence effective communication. Therefore, the mere use of a hand held bullhorn or loud speaker during a demonstration is not unlawful, and cannot be made unlawful (Wollam v. Palm Springs (1963) 58 Cal.2d 276,288).

Indeed, the ordinance on which Sgt. WOODWORTH relied to declare the bullhorn's use by PL unlawful, i.e. L.A.M.C. Sec. 115.02, in fact does not - and did not then - purport to make it so (C.T. 300).

Therefore, the attempted arrest of the man in the red plaid shirt. GUERRERO, for mere use of the bullhorn during a



demonstration in an industrial and shopping area, was unlawful.

Moreover, such attempted arrest was an unwarranted interference with the speech and associational rights not only of GUERRERO, but of all the demonstrators and their audience. See: In Re Brown (1973) 9 Cal.3d 613, 619-621, in which the Supreme Court concluded that Penal Code Section 415, as it then read, -

"....Cannot, consistent with First Amendment rights, be applied to prohibit all loud speech which disturbs others even if it was intended to do so."

See also: Edwards v. South Carolina (1963) 372 US 229, 235-238. 9L.Ed 2d 697; Cox vs. Louisiana(1964), 379 US536, 546-550,13L.Ed 2d 471 (Mass singing, chanting and loud and boisterous conduct on city streets is not a punishable offense, unless involving a clear and present danger of violence).

(Appellants' Opening Brief, pages 22-23)



Summary of the Altercations and Contacts Between  
Police and Demonstrators on June 18, 1977

---

Officers Leon and Martin approached Demonstrator Victor Guerrero, who was holding a bullhorn, and told him that he was under arrest; they seized his arm to take him into custody. At that point, Guerrero was pulled back from the officers. Leon testified that he was pulled into the crowd and struck on the back of the head by 2 x 2 sticks. (RT 377:3-5; 377:24-25; 378:11-14) Leon fell and sustained further blows until rescued by two officers. Martin testified that, as Guerrero was pulled from his grasp, the latter stomped on his foot. (RT 1118:6-21)

Sgt. Brazas testified that he saw one demonstrator strike plainclothes officer Hrehor on the head, and also saw Leon struck. (RT 875:28-876:22-25) Brazas stated that he ran toward the demonstrator who had hit Hrehor; and, that as he reached out for the demonstrator, his baton was knocked from

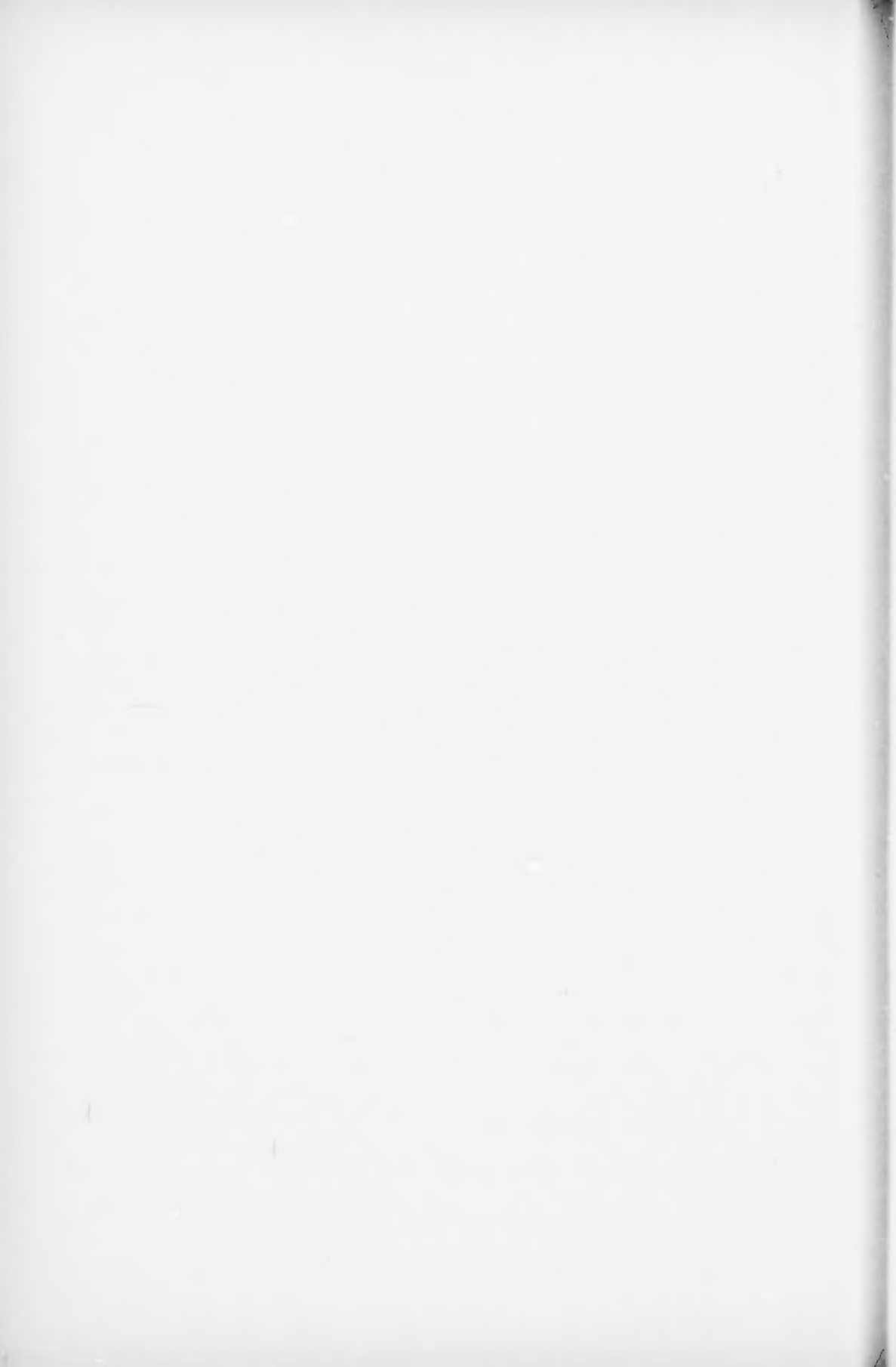


his hand and he was stuck on the head. (RT 876:25-27; 878:19-879:28)

Five demonstrators, Victor Guerrero, Hector Guevara, Pedro Guerrero, Edgar Hernandez and Jose Ofelio Hernandez, the last three being Petitioners herein, were identified by officer Brunckhurst as having struck Brazas with 2 x 2 sticks. (RT 981:5-24).

Plainclothes Officers Hrehor and Rigney ran to assist Leon as they saw him drawn into the crowd (RT 564:17-18). Hrehor ran up behind a demonstrator who was grabbing Leon's shirt, threw his arm around the demonstrator's throat and pulled him to the ground (RT 565:10-15; 642:17-25). Hrehor was then hit on the head (RT 566:7-11).

Petitioner Wagner was identified as one of the demonstrators who struck Hrehor. Wagner testified that he saw a beefy man with a suit on jump on Victor Guerrero and begin to strangle him, whereupon Wagner pushed his 5 year-old son aside, and struck





Guerrero's assailant once with a 2 x 2 stick  
(RT 1642:10-1645:23)

Officer Rigney testified that he tried to pull Leon from the demonstrators, and was struck by sticks on his legs, back and head. (RT 672:14-17; 27-28). Rigney testified that Victor Guerrero struck him with a stick as Rigney lunged and struck Guerrero on the cheek with his hand-held radio (RT 677:16-27).

Guerrero staggered back from the blow, enabling Rigney to run, at which time he was struck on the back with a stick, and knocked off his feet (RT 678:2-8). Rigney got to his feet, and ran to the middle of the intersection where he put in a call for police assistance (RT 679:14-21; 687:7-14)

Leaton heard Rigney's call for help, and responded to the area and joined a police line that was forming south of the demonstrators to contain them (RT 762:5770:11).

As Leaton approached the line, he saw officer McGowin fall backwards, and claims



to have seen a demonstrator, later identified as Wagner, with a police baton in his hand (RT 776:9-16-25; 777:12-20; 777:24-778:4). Leaton testified that Wagner struck McGowin several times on the hands and legs, at which point, Leaton used his baton to engage Wagner, striking him, as Wagner allegedly struck Leaton "numerous times" on the hands, forearms, legs and rib cage (RT 779:7-11; 781:9-783:5). Leaton used his baton to strike and disarm Wagner, then handcuffed him (RT 783:8-25).

Wagner denied striking any officer other than Hrehor (RT 1683:23-26) and testified that when the order was given to put down sticks, he complied. (RT 1651:10-18). At this point an officer struck him, knocking him down and breaking his rib (RT 1652:6-8).

Officer Roger Burton testified that he saw Martin engaged with a demonstrator in a tug of war over a bullhorn (RT 1036:14-27), and saw demonstrators remove signs from their sticks and swing them at police (RT



1037:916). Burton ran across the street to assist Martin, removing his baton from its ring (RT 1039:16-18). He confronted 2 or 3 demonstrators who swung their sticks at him. Burton ducked, and the stick struck his elbow (RT 1041:1-8)

Burton, and his partner, Bruckenhurst, identified the demonstrator who struck him as Edgar Hernandez (RT 989:17-21); 1044:19-28).

The altercation at Eighth and Los Angeles was very brief - about 30 to 45 seconds (RT 139:10-13; 213:1214; 329:8 17).

The demonstrators reformed at the Southwest corner, but found their way barred by police. They then proceeded South until reaching mid block, where police had formed a line blocking their southward march, and effectively hemming them against the building at 843 S. Los Angeles Street.

Woodworth then announced over the police loud speaker that the demonstrators were under arrest, and ordered them to put down



their sticks, and surrender peaceably (RT 278:10-13).

There is some conflict as to whether or not he gave a dispersal order; but there is no dispute that some demonstrators left the scene; a few of them went into 843 S. Los Angeles, where they were taken into custody by officers Middleton and Nakamura.

Officers testified that, as the demonstrators began to lay down their sticks, appellant Hertz shouted: "Don't listen to them; we must fight them; come join us" (RT 135:19-25; 136:5-6), and "police are going to beat us, beat us, beat us" (RT 281:6 11; 298:9-21; 692:23-26).

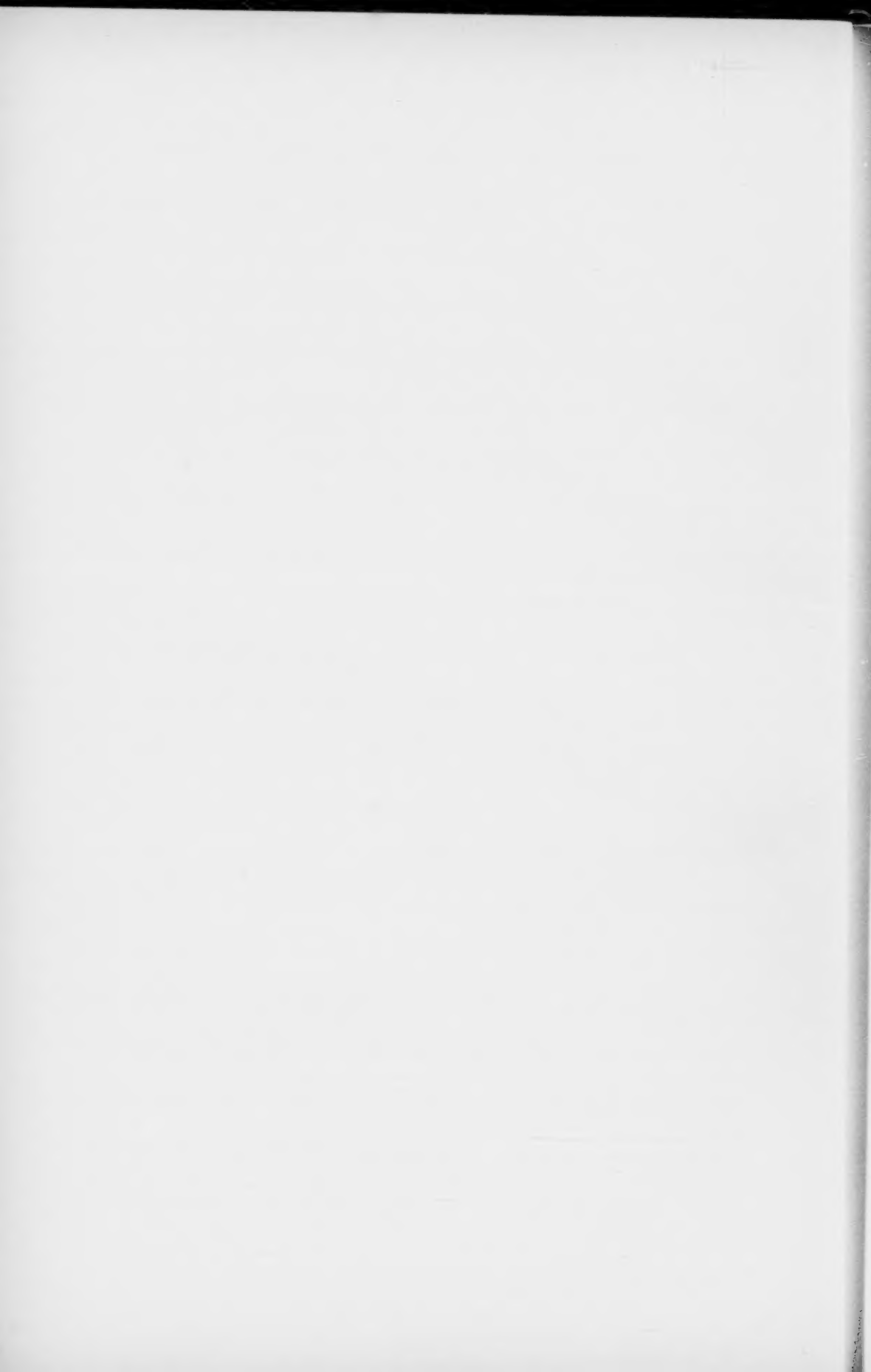
Sgt. Baughman then ordered the officers to begin taking demonstrators into custody (R T 137:8-9). Two officers reached into the group for a demonstrator (RT 137:18-26). One demonstrator allegedly swung at officer Barron with a 2 x 2 (RT 136:11-13), which Barron avoided. Barron then struck the demonstrator, Jose Ofelio Hernandez, with





his baton, and the latter fell down (RT 1363:512). Officer McGowin ran to assist Barron, using his baton to force back other demonstrators (RT 1401:7 10). Barron and McGowin were kicked by Hernandez, but he was subdued, handcuffed and placed in the B Wagon (RT 1366:14, 1401:19-22; 1402:3-4; 1404:6-10). Barron testified tht he later noticed a small puncture wound in his left shin. (RT 1368:4-12; 1370:6-12).

Meanwhile, officer Ronald Vencill saw appellant John Hankey standing facing the officers with a stick in his hand (RT 1435:13-17; 1436:27-28; 1437:6-7). Vencill moved in, pulled Hankey from the crowd and wrapped his baton around Hankey's head (RT 1438:22-26; 1430:910). Hankey dropped his stick; and he was put on the pavement and handcuffed behind his back (RT 1441:2-1591:5 8). Vencill then rested his knee on Hankey's back for about fifteen minutes. (RT 1441:9-20; 1444:18, 1445:7; 1591:22-25).



The Cross-Examination of Defense Witness  
Ruth Kennedy, and the Court's Ruling  
Striking Her Testimony (Reporter's  
Transcript 3442-3450):

By Mr. Stone:

Thank you. Mrs. Kennedy or Ms. Kennedy?

A. Ms.

Q. Ms. Kennedy. Thank you. Are you a member  
of the Progressive Labor Party now?

A. No. I said previously I left in September  
of '77.

Q. Are you a member of Committee Against Ra-  
cism now?

A. No....

Q. In 1977 how many security practice sessions  
did you attend?

A. Just one.

Q. And was that at the Alianza?

A. No, it was not.

Q. Where was the one you attended?

A. On Someone's lawn.

~~James Henry~~

Q. Pardon me?

A. On someone's lawn.

Q. On someone's lawn?

A. Yes.

Q. In the City of Los Angeles?

A. I am not sure if that is technically where it was.

Q. What was the address, do you know?

A. I do not know the address.

Q. Whose house was it?

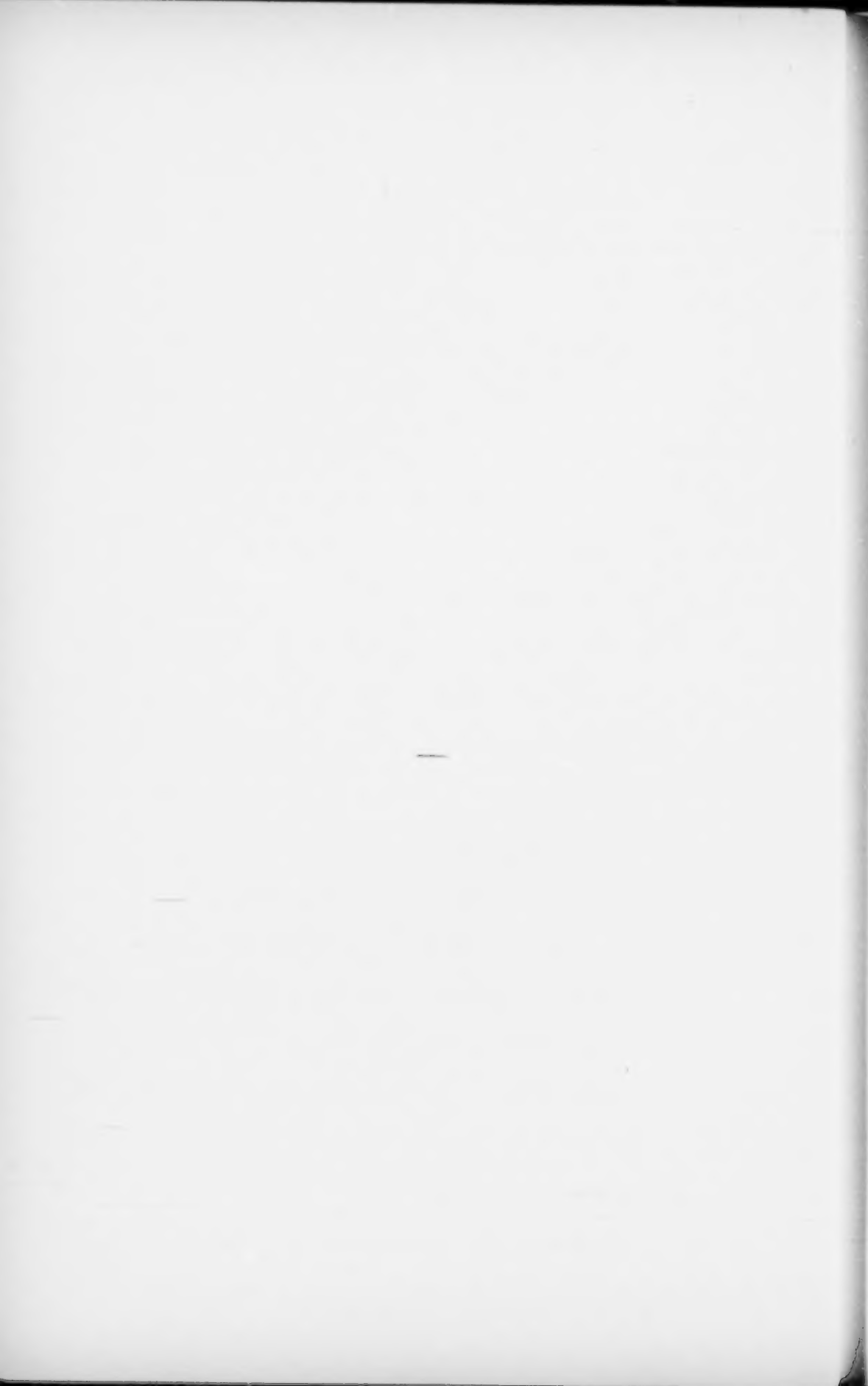
MRS. HANKEY: I would object. It is irrelevant and also I object on the ground of the First Amendment.

THE COURT: Well, you asked the question on direct about her attending this. She can't testify on direct and then start claiming the privilege on cross.

MRS. HANKEY: Well, I didn't ask her about whose house it was at.

THE COURT: That doesn't matter. He is entitled to cross examine on the subject you brought up on direct.

Answer the question, please.



THE WITNESS: I will not answer that question based on my First Amendment right of association.

Q. BY MR. STONE: Was it at Gus Bracho's house?

A. I will not answer that question.

Q. Was it at 1156 Menlo Street in the City of Los Angeles?

A. I won't answer that question.

THE COURT: All right, ladies and gentlemen, will you step back into the jury room, please. The usual admonition is in full force and effect.

[The following proceedings were held in open court, out of the presence of the jury:]

THE COURT: Ms. Kennedy, you have testified on direct examination in this case that you attended a security practice in March or April of 1977 in connection with the Progressive Labor Party activities, so to the extent you had any First Amendment privilege in association it is this court's opinion you waived it when you testified to





that when you voluntarily took the stand and responded to that question stating those activities. Counsel is entitled to cross-examine as to any subject on which you have testified on direct.

THE WITNESS: My understanding of my First Amendment privilege is that I may talk about what happened but that I do not have to say who -- the mere presence of someone at a meeting.

THE COURT: This is not the mere presence. He is asking you where this took place. At what location this took place.

He has asked you specifically respecting a certain place and you are refusing to answer, and I am going to order you to answer.

And I am further going to advise you that if you refuse to answer after the court has ordered you to answer, the court is going to find you in contempt for which you can be sent to jail until the end of this proceeding or until such time as you choose



to answer the question.

Now, you appeared here on behalf of the defendants and I think you should understand very clearly you cannot take the stand in a proceeding and testify as to certain facts even with respect to the Fifth Amendment. A defendant in a criminal case can't take the stand and testify in his own behalf and then refuse to answer certain other questions. It just doesn't work that way.

THE WITNESS: Your Honor, these people involved in this trial are being accused of a conspiracy, therefor any people I name could be accused of doing that.

THE COURT: They are not being accused of anything. This is not a criminal proceeding. This is a civil trial for damages. It is not brought by the People. It is brought by the individual plaintiffs.

THE WITNESS: Your Honor, the people were not involved in this suit. To mention names involved in Progressive Labor Party activities



THE COURT: I wish to make it very plain to you when you took the stand and you voluntarily responded to the question that you participated in a security practice March or April of 1977, that with respect to what other persons participated in that practice and where it was held, you waived any constitutional right that you may have had. This is a very relevant issue in this case, that is the matter of security practices and what went on in the security practices and who was present at the security practices.

MRS. HANKEY: May I be heard, Your Honor?

THE COURT: Yes. You asked you brought her here and you asked her the question and she answered this question. I would like you to show me any authority you can respond to a question relating to a particular subject and then exercise some constitutional privilege not to answer further questions about it on cross



examination.

MRS. HANKEY: Well, I think Ms. Kennedy has indicated she will answer any questions about what happened at that security practice.

THE COURT: They are entitled to know where it was; they are entitled to know who was present at it.

MRS. HANKEY: Well, I don't believe they should be entitled to know whose house it was at. I think that that is irrelevant. If the person's house -- if the person who had it at their house may not even have been there, may not have been a member of the Progressive Labor Party, may not have been a defendant in this lawsuit; may not have been present on June 18th.

THE COURT: That may all well be.

MRS. HANKEY: Well, people do have a First Amendment right and I think --

THE COURT: You should have thought of that before you called this witness and asked her specifically about attending a security practice very shortly before this

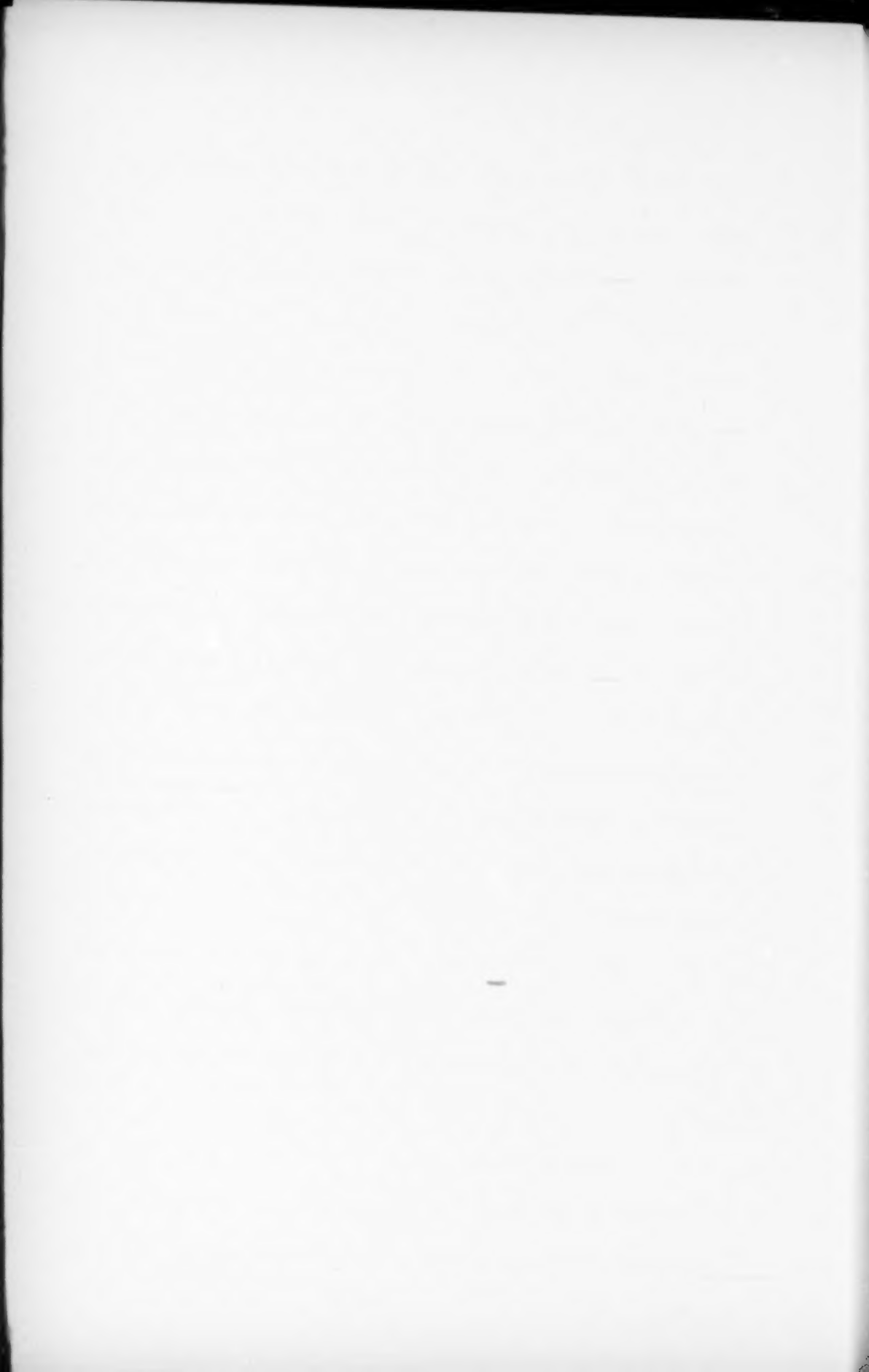




incident occurred which much of this case has revolved around, the question: Was there Security and what was Security supposed to do and what kind of training that they had. And I can't think of a single issue hardly in this case that is more relevant than what security practices took place, where they took place, when they took place and who was present. And you just simply can't bring a witness up and ask them a part of a subject matter and then think the witness can claim some kind of a constitutional privilege, including the Fifth Amendment privilege. Criminal defendants can't even do that in a criminal proceeding.

MRS. HANKEY: Well, I think there is a First Amendment interest which overbalances the relevancy of whose house it was at.

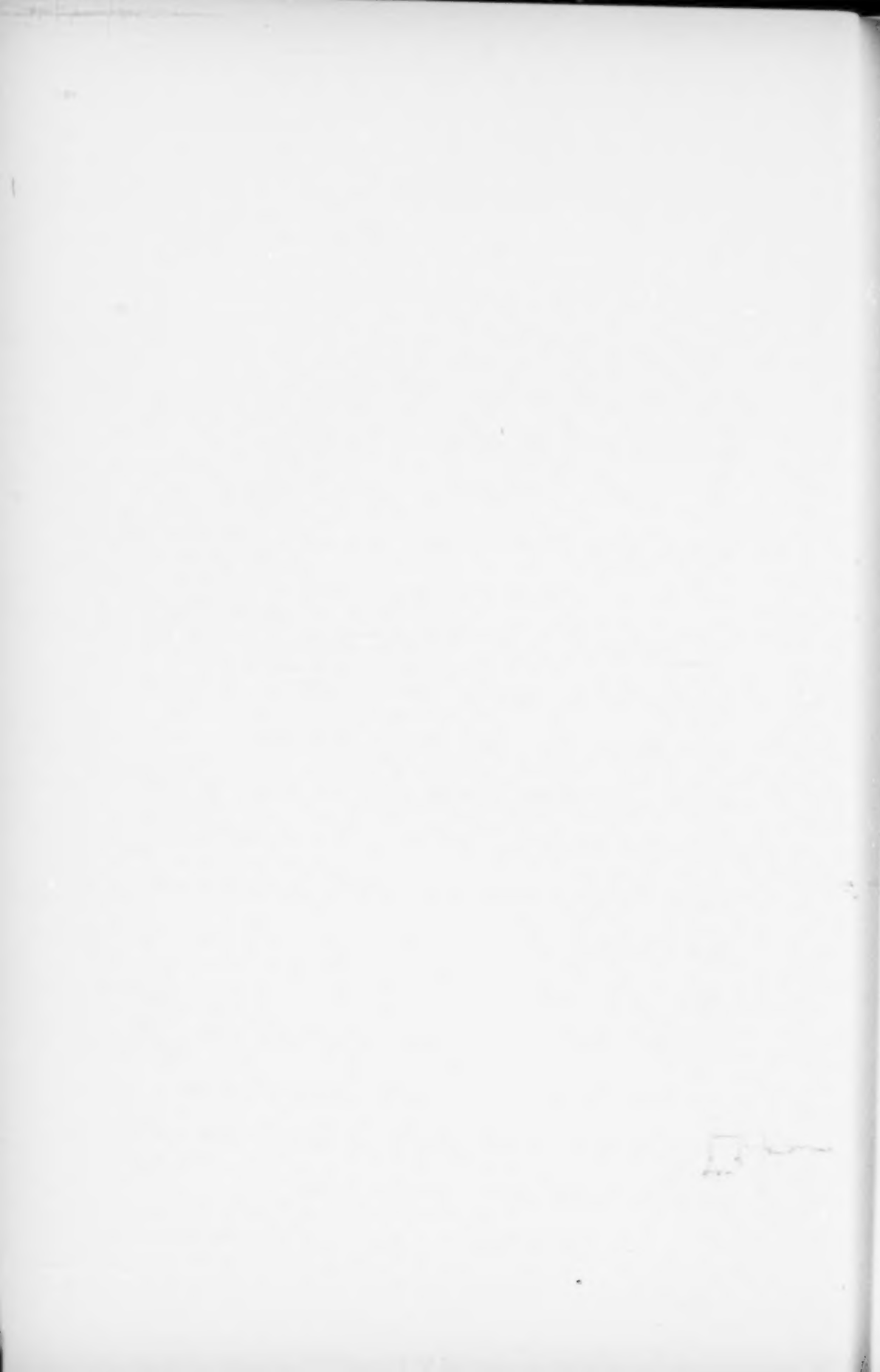
THE COURT: Well, then I am just -- I mean I am not really looking forward to putting this witness in jail in spite of the



fact. I think she is willfully refusing -- apparently going to refuse to answer the question, so I am prepared to just excuse her and tell the jury her direct testimony is stricken and they are directed to disregard it entirely.

MRS. HANKEY: Well, Your Honor, I would just like to say one thing about that which is that defense counsel has raised throughout this trial that a lot of the questioning going on is going into areas protected by the First Amendment and the Fifth Amendment and that if the plaintiffs in this case are going to be permitted to go into those areas with every witness that we call and ask a lot of names of people who are not defendants in this lawsuit, who could be adversely effected by having organization with the Progressive Labor Party, that that deprives us of our right to put on a defense in the case.

THE COURT: No, it doesn't deprive you at all. That is the choice you may wish



to make or your witnesses may wish to make, but there is such a thing in the law as the right of cross-examination and the right of cross-examination is a very important right and I am not going to deprive the plaintiffs of their right of cross-examination by letting your witnesses sit up here and selectively decide what they wish to testify to on a certain subject.

This lady may be a very, very bright historian but it is clear to me she does not understand the law, however, I would hope you would understand, Mrs. Hankey, that the plaintiffs or the other parties in this suit have a right of cross-examination. She has testified respecting a specific event that is very relevant in time, and type and style to the issues in this case and I am not going to permit her to sit here now and say she is not going to answer questions on cross-examination regarding it.

MR. WEITZMAN: Your Honor, may we have a moment to confer with the witness?



THE COURT: Yes, you may. Do you wish to step out in the hallway?

MR. WEITZMAN: If Your Honor please.

THE COURT: That is fine. Just be sure you don't leave. [Recess taken.] .

[The following proceedings were held in open court, out of the presence of the jury:]

THE COURT: All right, you have had an opportunity to confer with your witness. Where are we?

MRS. HANKEY: Well, Ms. Kennedy is not willing to answer the question.

MR. STONE: Your Honor, under the circumstances, I know you do not wish to see Ms. Kennedy further inconvenienced, but I would move to strike her testimony entirely from the record.

THE COURT: The motion will be granted. I will tell you very straight, this is a contempt that in my opinion absolutely would stand up because of her taking the stand voluntarily and testifying to this in





the first place. And to the extent she may have had any privilege, it is very clear to me she has waived it, but we are not going to have selective testimony. One of the most important rights in a trial is the right of cross examination and I am not going to permit witnesses to take the stand and then selectively voluntarily take the stand and testify on direct and then selectively decide what they are going to respond on the subject on cross-examination.

All right, you may step down, and you are excused. Call the jury back in.

[The following proceedings were held in open court, within the presence of the jury:)

THE COURT: All right, the record shall reflect all of the jurors and alternates are again present.

Ladies and gentlemen of the jury, as you heard just before you were excused the witness was refusing to answer any further questions respecting the matter that she



testified to on direct, to-wit, attending a security practice in March or April of 1977.

It is the court's opinion that when a witness voluntarily takes the stand and testifies to a particular subject matter, that there is a right on the part of other parties to cross-examine them and that if a witness has a constitutional right that a witness may have had who voluntarily has taken the stand and chosen to testify on a subject has been waived. And since she refuses to answer, the court has several options and the option which I have chosen to exercise under the circumstances of this case is I have excused the witness and her direct testimony was stricken, and you are to disregard it entirely as though you had never heard it. You are not to consider any matter about which she testified to on direct.

All right, let me see counsel.

[Conference at the bench among court and counsel, out of the hearing of the jury and the court reporter.]



THE COURT: All right, ladies and gentlemen, insofar as you are concerned, we are going to recess the trial until Monday. Counsel and the court will use the time tomorrow to take up other matters that have to be taken up before the conclusion of the case, so to accommodate other witnesses we will go over until Monday.

You are again admonished it is your duty not to discuss any subject related to this trial either among yourselves or with anyone else or form or express any opinion thereon until the matter is finally submitted to you. Have a nice weekend. Monday morning, 9:00 a.m..

[Proceedings continued to Friday, August 6, 1982, 9:45 a.m.]



Portions of the Contempt  
Hearing of Petitioner  
Barbara Hertz

---

(RT 2412-2437)

THE COURT: All right, the record shall reflect the court and counsel are present. The jury and the alternates have been excused. At this time the court is going to cite you, Mrs. Hertz, for contempt for failure to answer the following questions:

"QUESTION: On June 18, 1977 was Jose Madrid a member of the Progressive Labor Party?"

You have heretofore been ordered to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.

THE COURT:

"QUESTION: And how long had Victor Guerrero been a leader of the Progressive Labor Party prior to June 18, 1977?"





You have heretofore been ordered to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.

THE COURT:

"QUESTION: Now, in June 1977 you and Victor Guerrero had equal rights of control over party functions in the Los Angeles Area, is that right?"

You have heretofore been ordered to answer that question. Do you still refuse to answer?

THE WITNESS: Yes. . . . .

THE COURT: The question would be "Did Victor Guerrero in June of 1977 carry on any program of spreading Party thinking? Party philosophy? Party objectives?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.



THE COURT:

"QUESTION: Isn't it true, Mrs. Hertz, that membership in the Progressive Labor Party is closed except to those who are invited by the leaders of the Party?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.

THE COURT:

"QUESTION: Prior to June 1977, when a new member joined the Progressive Labor Party was there a program of instruction or indoctrination undertaken?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes...

THE COURT:

QUESTION: "Did Mr. Gus Bracho teach the class in the use of



sticks?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.

THE COURT:

"QUESTION: Was Linda Wagner a member of the Progressive Labor Party in June 1977, Mrs. Hertz?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes, I do. . . .

THE COURT:

"QUESTION: Was Kathy Dahlgren a member of the Progressive Labor Party in June 1977?"

You have heretofore refused to answer that question. Do you still refuse to answer?

THE WITNESS: Yes.

THE COURT:

"QUESTION: In June of 1977 was



Edgar Hernandez a member of the Progressive Labor Party?"

Do you still refuse to answer that question?

THE WITNESS: Yes.

[The witness was then asked, and declined to answer, the same question concerning P.L.P. membership, and a number of questions concerning C.A.R. membership, as to the following named individuals:

Hector Guevara, Pedro Guerrero,  
Oscar Lara, Oscar Aparicio,  
Lombardo Alfaro, Jose Ofelio Hernandez  
Jose Madrid, Hugo Sarmiento, Joseph  
Ruibal, Oscar Amaya, Barry Sautman,  
Enrique Romero, Oscar Ruiz, Francisco  
Estrada, Francesca Sautman, Mar6tha  
Lafoya Fernandez, Mary Ruiz, John  
Hankey, Annie Newman, Norma Amaya,  
Bertha Hernandez, Milton Rosen, Mort  
Scheer, Kath Dahlgren, Don Finegold,  
Chuck Churchill, and Vera Greenwood.]





THE COURT: All right. Now, before proceeding further, I wish to point out that the deposition of Barbara Hertz which was ordered lodged with this court at the commencement of this trial, that on the following pages she gave testimony on the following subjects:

On page 15 she testified respecting the connection or relationship between the Committee Against Racism and the Progressive Labor Party.

On Page 16 she responded to the question as to equal rights of control between her and Victor Guerrero with respect to the Progressive Labor Party.

She also answered on the same page the chairman of the Party in June 1977 was Milton Rosen.

On Page 36 she responded to the question of whether or not Raul Fernandez was a member of the Progressive Labor Party, and also whether he was a



member of the Committee Against Racism. She also answered that Victor Guerrero in 1977 was a member of the Committee Against Racism....

[The court proceeds to provide a list of additional references to locations in the deposition of Barbara Hertz at which the witness responded without objection to the question concerning affiliation or functions of the named persons or concerning her acquaintanceship with them.]

In addition to the questions that were specifically put, the witness has further indicated that she would not answer any questions if they were asked as to these same persons as to whether or not they were associated with the Progressive Labor Party.

You still would refuse to answer any questions as to whether or not those persons were associated with the Progressive Labor Party?

THE WITNESS: Yes, I would.



THE COURT: You may now state your reasons. . . .

THE WITNESS: The reasons I refused to answer these questions is because I, realize now much more than I realized before that these questions jeopardized my First Amendment rights to association, free association, supposedly, and also my right to not incriminate myself, the Fifth Amendment right, and also they are not relevant to this case. . . .

THE COURT: All right. I think the record should reflect Mr. Hugh Manes is in court.

Do you wish to make a statement on behalf of your client who I understand you are appearing for, Mrs. Hertz, with respect to this contempt matter?

MR. MANES: Yes, Your Honor. May it please the court, my client would at this time like to invoke, and make applicable to each and every one of the questions that the court has cited, her privilege against self-



incrimination as well as her associational rights and relevancy issue.

I would like to point out with regard to the Fifth Amendment questions, that is, the invocation of the privilege against self-incrimination both of the California Constitution as well as the Federal Constitution, that even though she may have failed to invoke that privilege at her deposition, she nevertheless still may do so at a trial of this kind. She has not waived that right, assuming she was ever informed of it in the first place in the deposition proceeding.

I would respectfully submit to the court and ask the court to consider that when the witness has invoked the privilege, she is doing so not only personally for herself, but she is doing so out of fear of prosecution. . .

[Counsel then recounts the facts that the L.A.P.D. takes the apparent position that P.L.P. is a "terrorist" group justifying





infiltration; and asserts that even acts and affiliations from the past may be relied upon should any governmental agency seek a conspiracy charge.]

THE COURT:

All right, the court finds Barbara Hertz has refused to answer each and every stated question; that each and every question that she refused to answer pertains to material that is relevant and material to the issues of the instant case and is not privileged.

The court has informed Barbara Hertz that refusal to answer the questions could result in her being held in contempt of court and punished as provided by law. The court has ordered Barbara Hertz to answer each and every question heretofore indicated. The court finds that Barbara Hertz heard and understood the valid orders of the court but willfully refused to comply with said orders and to answer the questions with no valid privilege or legal excuse for said refusal and disobedience.



The court further finds that Barbara Hertz had the ability to comply with the orders of the court by answering the above-stated questions. The events recited herein occurred in open court and in the immediate view and presence of the court.

The events recited herein occurred in open court and in the immediate view and presence of the court. The acts described beyond a reasonable doubt constitute willful disobedience of lawful orders of this court and an unlawful interference with the proceedings of this court, and refusal to answer as a witness before this court.

. . . It is found ordered, and adjudged that Barbara Hertz is guilty of contempt of court. Barbara Hertz is ordered into the custody of the Sheriff of the County of Los Angeles until such time as she has answered each and every above-stated question as a witness under oath or until the proceedings pending in the above-captioned matter are completed.



Testimony Of Constance Milazzo  
Dial Regarding Unrelated Incidents  
And Statements

---

Forum of July 8, 1976

THE WITNESS: Barbara Hertz stood up and identified herself as a member of the Progressive Labor Party and she stated that -- her other statement she said there was a need to fight not only intellectually for socialism but physically. Members had to be willing to fight physically.

Q. BY MR. STONE: Was there any mention about the revolution?

A. Yes. She said that this physical as well as intellectual fight would have to be toward an inevitable class war.

Q. Any other statements made by any other persons?

A. Yes. The second person who stood up and identified themselves as a member of



the Progressive Labor Party also stated that Progressive Labor Party supported violent revolution and to be a member you also had to support violent revolution.

Q. And what do you recall the persons present at that time?

A. Persons who identified themselves as members of the Party were Barbara Hertz, Victor Guerrero, Reid Parker, Linda Wagner, John Wagner, Barry Sautman, Howard Hertz and Francesca Sautman.

(RT 2929:7-27)





\* \* \*

The Demonstration of June 10, 1977

A. That was a demonstration that was organized by Barbara Hertz to protest the killings I believe it was two Puerto Rican men who were killed in Chicago by the police. And that march was to protest those killings.

Q. Were their signs carried at that demonstration?

A. Yes.

Q. And were there sticks -- signs carried on sticks?

A. Yes.

Q. Do you have a recollection what the signs said?

A. Several of the signs said "Death to Cop Assassins. Turn Rebellion into Revolution."

(RT 2964:7-17)

\* \* \*



The Meeting of April 13, 1977

A. Kathy Dahlgren spoke at that meeting and stated that the purpose of the Committee Against Racism summer school would be to incite rebellion within what she called the ghettos.

Q. The purpose of the Committee Against Racism summer school?

A. Summer project.

Q. Summer project. Had there been discussion about the summer project before?

A. Yes.

Q. What is the summer project?

A. The summer project was going to be an attempt by the Progressive Labor Party and the Committee Against Racism to get minority youths to join Committee Against Racism.

Q. Specifically minority youths?

A. Specifically minority youths around the issue of unemployment.



Q. What was the purpose of that?

MR. WEITZMAN: I will object to that as irrelevant.

THE COURT: Sustained.

Q. BY MR. STONE: What was the primary objective of the summer youth project?

A. The primary object was to -- by the members of the Party -- by the Committee Against Racism and the members of the Progressive Labor Party -- to eventually win them over to the Labor Party ideology.

(2962:20 - 2963:14)

★ ★ ★



The Meeting of September 7, 1976

Q. There was a second meeting at the Mar Vista Housing Project?

A. Yes, on September 7th.

Q. When was that?

A. September 7th.

Q. What occurred at that meeting?

A. Again, there was talk at the meeting about harassment within the housing district and specifically as to the housing. I believe it was the Housing Authority or some kind of policing unit within the district. And Bill Quemada stood up and also identified himself as a member of the Party and on several different times stated that the police should be killed and that they ought to go organize to kill the police. He made the statement a number of times when it wasn't really no one else was talking about it and he just made the statement. He did it obviously several times.

Q. Did he use the term police when





he referred to the police or if you can recall the statements that he made?

A. His statements were "killing the pigs," but my understanding of that was not just police but at the time I believe we were talking about the security people there in the housing project.

(RT 2940:23 - 2941:16)



\* \* \*

The Meeting of July 11, 1976

Q. BY MR. STONE: Was there a discussion of violence at this meeting at Joanna Amos' house on July 11, 1976?

A. Yes. Victor Guerrero --

Q. And at that time did you have any knowledge as to Victor Guerrero's relationship to the Party?

A. Other than -- not other than the forum.

Q. What knowledge did you have?

A. My knowledge at that time was he was a member of the Progressive Labor Party.

Q. What did Mr. Victor Guerrero say at that meeting?

A. He gave a long talk on the Progressive Labor Party and on the philosophy of the Progressive Labor Party.

Q. And what did he say?



A. What he said was that he explained the Progressive Labor Party believed in revolution, and he said why they believed that the violent overthrow of the United States Government was a necessity. He said that members of the Party had to be willing to engage in overt acts of violence. At that time Joanna Amos wh# was also attending that meeting stated that well, Victor made it clear that overt acts of violence meant killing police officers and Joanna Amos stated she couldn't kill anybody. She said she just didn't belief she could ever do that. I never saw her attend another meeting after that.

(RT 2930:10 - 2931:5)



The Meeting of May 23, 1976

Q. Did you attend a meeting on May 23, 1976?

A. Yes, I did.

Q. Did you prepare any kind of writing or notes following attending that meeting?

A. Yes, I did.

Q. Did you prepare any kind of writing or notes following attending that meeting.

A. I have some, yes.

Q. What happened at the May 23, 1976 meeting?

A. At that meeting members of the Progressive Labor Party and Committee Against Racism who identified themselves members stated they were forming committees in the city and that their objective was to actively oppose the anti-busing groups in the city. They showed slides and made statements about the 1975 busing riot in





Boston. They explained that they had participated in those riots and that they expected the same sort of activity in Los Angeles. And in fact my impression from that meeting was they intended to incite that same sort of disturbance in Los Angeles.

Q. Now, you said there were slides shown?

A. Yes.

Q. What did the slides depict?

A. The slides showed some of the violence from Boston. As I recall some of the riots themselves, policemen on horses, and they explained how they would learn how to fight these policemen on horses with sticks.

(RT 2922:24 - 2923:20)



Testimony of Constance Milazzo  
Dial Concerning P.L.P. Security

---

Q. BY MR. STONE: There was a demonstration. Where was this demonstration on December 4th, 1976?

A. It was in the area of Fifth & Broadway in downtown L. A.

Q. Was this a Progressive Labor Party demonstration?

A. Yes.

Q. Was a bullhorn being used?

A. Yes.

Q. Were there police officers present?

A. At one point, yes.

Q. How many?

A. Two that I saw.

Q. Did you recognize one of them?

A. One of them at that time was Brazas. Sergeant Brazas.

Q. Sergeant Brazas. Who was using the bullhorn?



A. Raul Fernandez.

Q. And did the police officers attempt to arrest Mr. Fernandez?

A. Yes.

Q. What happened?

A. When they attempted to arrest him other members of the Progressive Labor Party moved in front of him and some of them tore the signs off the sticks and stood there and prevented the two officers from reaching in and getting Mr. Fernandez.

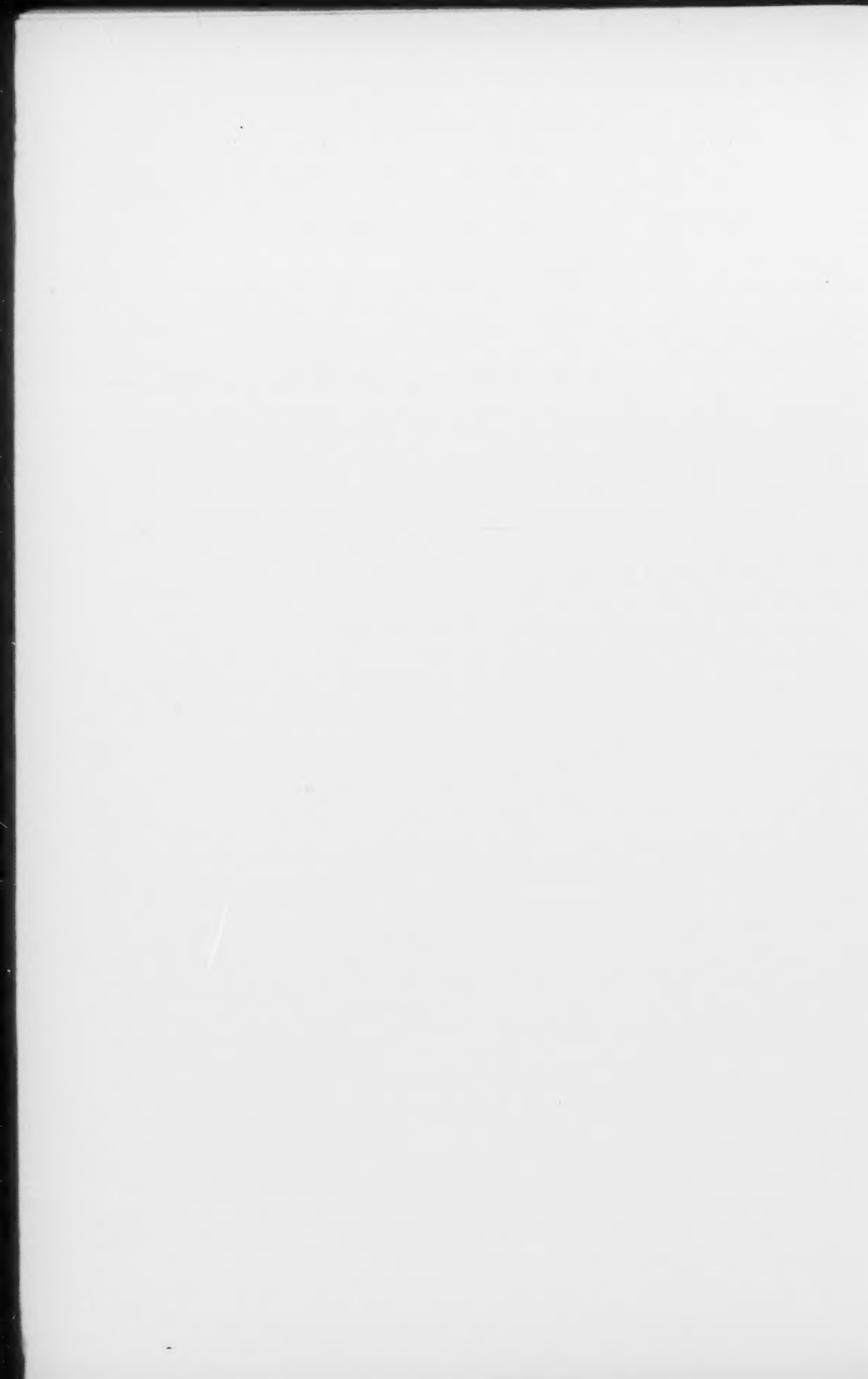
(RT 2950:15 - 2951:11)

\* \* \*

Q. Do you have a recollection as to who these persons were ?....

A. They included Barbara Hertz, Victor Guerrero, Martha Tafoya Fernandez, Vera Greenwood, Rolando Estrada, Kathy Dahlgren -- ...

A. --Rolando Estrada, Kathy Dahlgren, Reid Parker, Bill Greenberg, Mary Stewart,



Oscar Ruiz, Pedro Guerrero, Nohemy Guevarra, Oscar Gomez Amaya, Barry and Francesca Sautman, Annie Newman, Edgar Hernandez, Ofelio Hernandez, Oscar Lara.

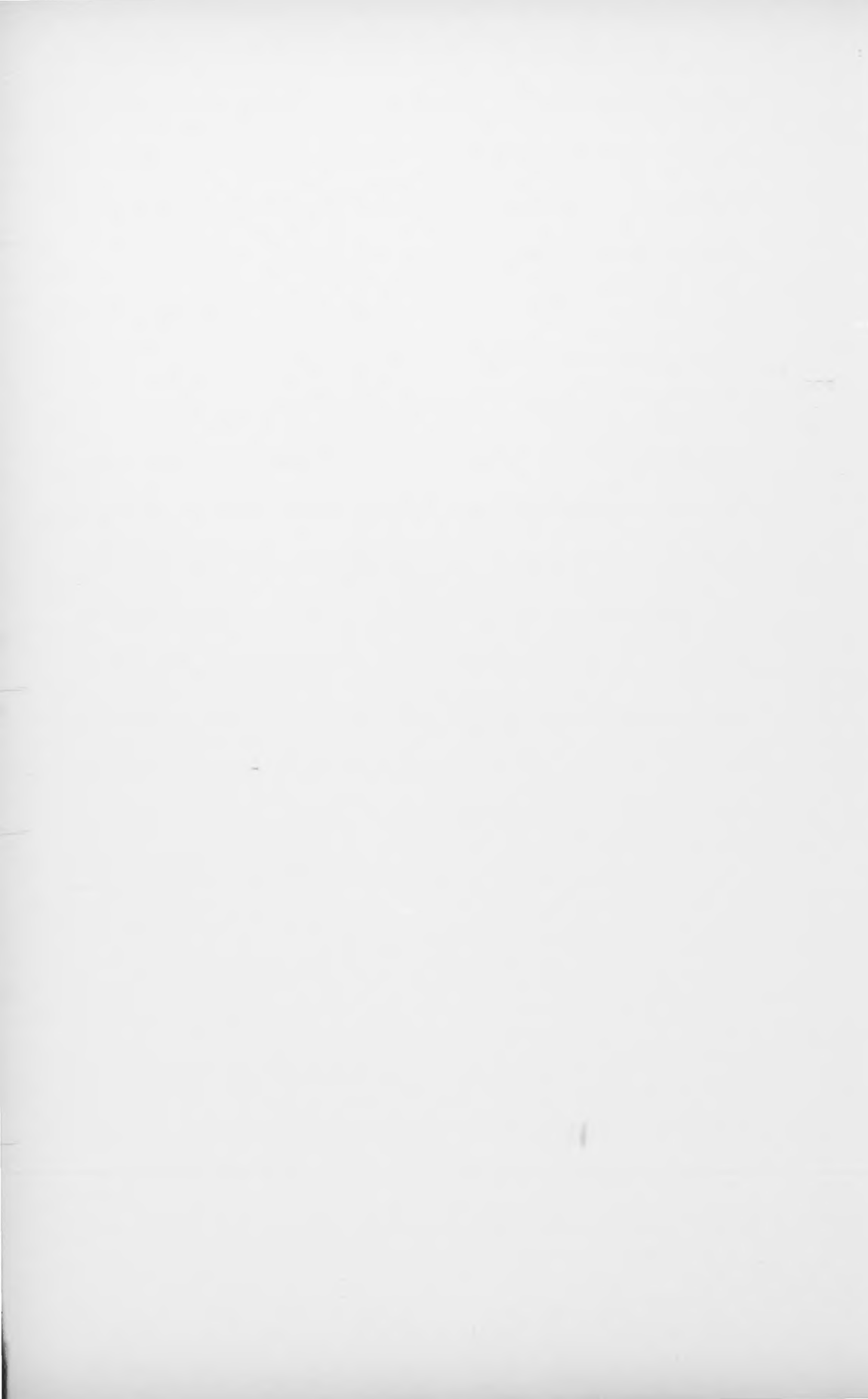
Q. Now, what did these persons you have just named do?

A. They stood in front of Raul Fernandez and prevented the police getting in and reaching him. They took the placards off of the sticks and used the sticks almost at port-arms in a manner -- a threatening manner. The police tried to reach in but there were only two of them so they didn't force it. He escaped through the crowd of PLP demonstrators and got away.

(RT 2385:2 - 2386:3)

\* \* \*

A. That was partially a security meeting and at that meeting there was a lot of discussion as to what should be done if the police or Immigration tried to take any





of the demonstrators in San Clemente.

Q. And what was -- was there a plan developed?

A. Gus Bracho at that time talked about the use of the sticks.

Q. What did he say about the use of the sticks?

MR. WEITZMAN: I will object to the answer is not responsive to the question.

THE COURT: Overruled.

Q. BY MR. STONE: What did Mr. Bracho say about the use of the sticks at that meeting?

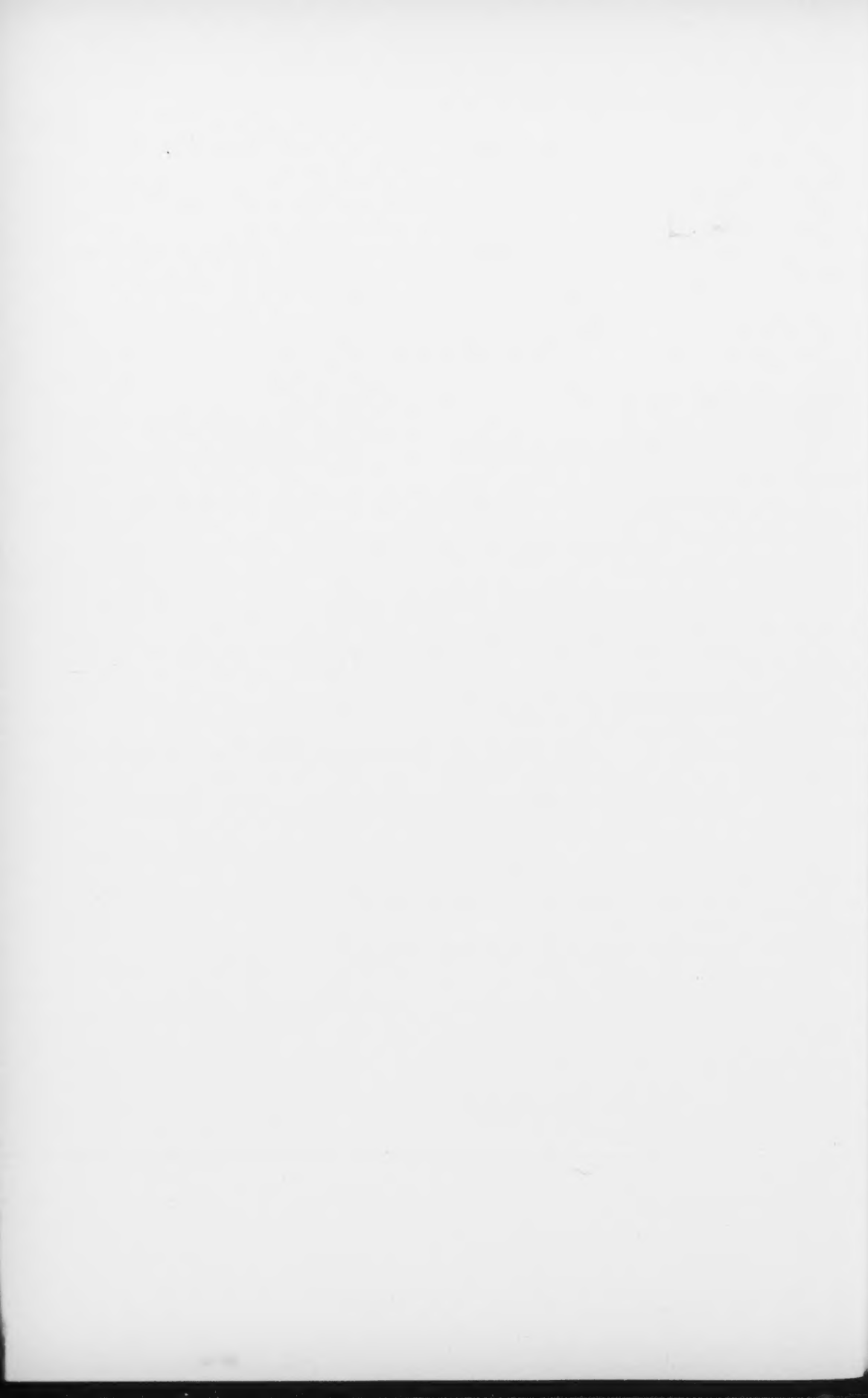
A. He stated that the sticks, the 2 x 2 sticks would be used by the security people to prevent either the police or to prevent immigration officials from arresting any of the demonstrators.

Q. Was there agreement to that?

A. Yes.

Q. By who?

A. By the persons who attended the meeting.



Q. Name them.

A. Barbara Hertz, Kathy Dahlgren, Martha Tafoya, Oscar Lara, Ofelio Hernandez, Jose Castrita, Oscar Lara.

(RT 2933:1-24)

\* \* \*

Q. What happened on September 2nd, 19 what?

A. 1976.

Q. All right?

A. There was a meeting before the general meeting with the residents of the housing district. It was a security meeting. At that meeting Linda Wagner who also had identified herself as a member of the Party demonstrated the use of the 2 x 2 sticks and why they were carried.

Q. And why were they carried?

MR. WEITZMAN: I will object as irrelevant, hearsay and as having absolutely nothing to do with this case. We have not



identified any party as present other than Linda Wagner, have no idea who she is talking to. At this juncture it is absolutely irrelevant.

THE COURT: Overruled.

Q. BY MR. STONE: Now, Linda Wagner was a member of the Progressive Labor Party; is that right?

A. Yes.

Q. And did she make statements at that meeting about the reason that the sticks were carried?

A. Yes.

Q. And what were those statements?

A. She said the sticks were carried to be used as weapons. They wouldn't the police wouldn't allow you to carry the sticks alone. The placards were attached and as long as the placards were attached they could carry the sticks.

Q. And was there any demonstration of how to use the sticks at that time?

A. Yes.



Q. Who did that demonstrating?

A. Linda Wagner.

Q. What did she demonstrate?

A. Without a stick she just showed the motion of tearing the placard off and how the stick would be held.

Q. How many people were in attendance?

A. At that time there were just a few people from the Progressive Labor Party and Committee Against Racism.

Q. And do you remember the identities of those people, if you know?

A. I remember Bill Quemada was there, and a lot of the a number of the members of the Mexican part of the Committee Against Racism but I can't recall -- Willie Johnson was there.

(RT 2936:7 - 2937:22)

\* \* \*

Q. Did you attend a meeting of the Progressive Labor Party on June 16, 1977?





A. Yes, I did.

Q. Where was that?

A. Well, not on June 16th.

Q. I am sorry. January 16, 1977?

A. Yes.

Q. Where was that?

A. That again was at Gus Bracho's house.

Q. What address?

A. It was 1156 Menlo Street.

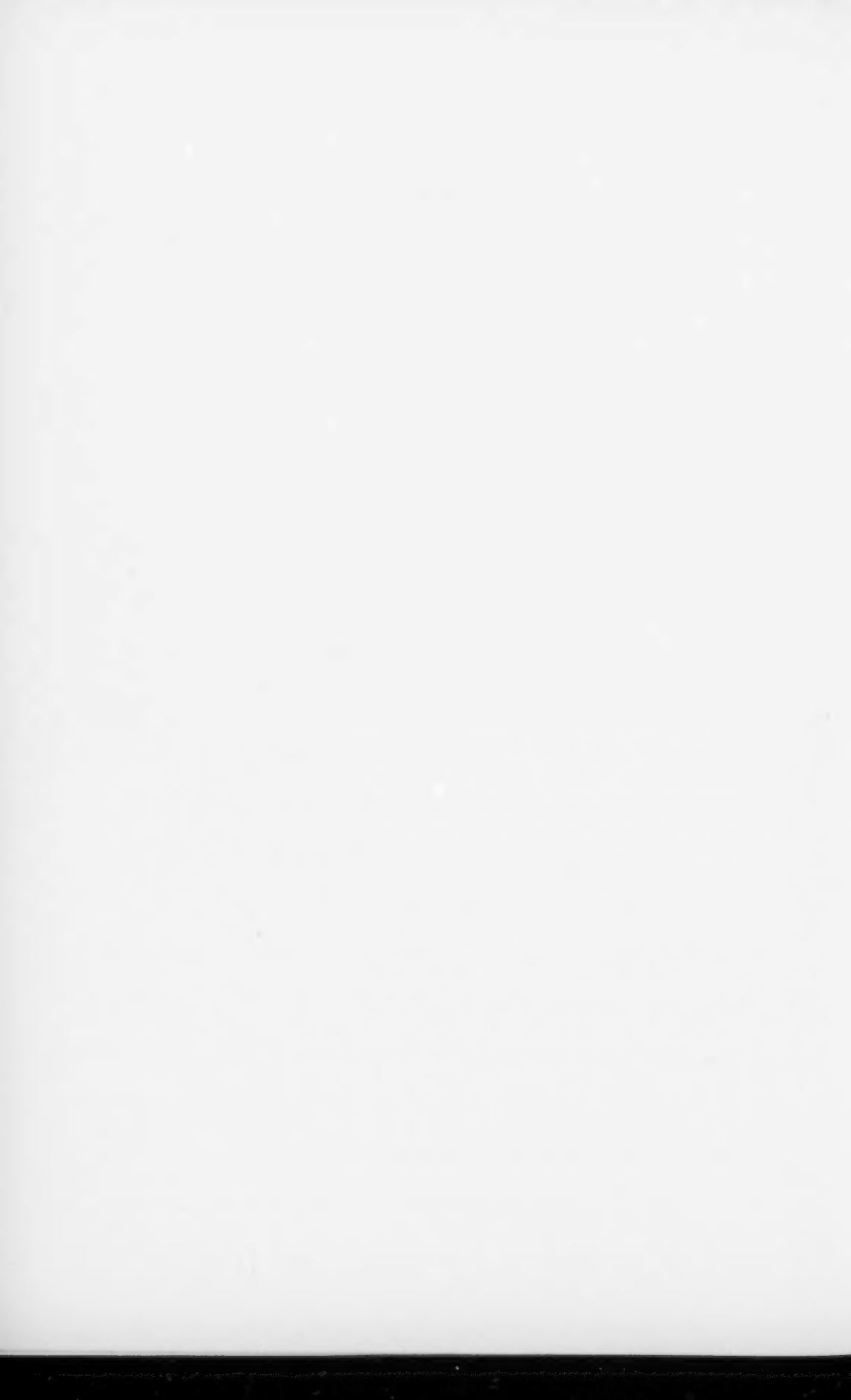
Q. What occurred at that meeting?

A. At that meeting there was a discussion as to whether Security should be only used as a defensive means or whether it should be used offensively and there was a good deal of discussion on that point.

Q. Who was present at that meeting?

A. There was Gus Bracho, Raul Fernandez, Oscar Lara or Jose Castrita, Martha Fernandez, John Hankey, Poncho Mora, Don Finegold, Edgar Hernandez, Reid Parker, Francesca Sautman and then later on Ofelio Hernandez and Pedro Guerrero.

Q. And is Poncho Mora, Frank Mora?



A. Yes.

Q. Did you make any statements at the meeting yourself?

A. No.

Q. What was said with respect to Security at that meeting?

A. Well, they decided that the security forces would be used not only to well, they would be used to prevent Bus Stop or any other group from attacking the marchers but also they would be used offensively should they see a group of Bus Stop. Security could be used offensively as well as defensively.

Q. Do you recall any specific statements being made by any of the persons present?

A. Well, they said they would use Security again at that meeting they again stated they would use the security people to prevent the INS and police from being arrested.

(RT 2951:12 - 2952:22)

2  
No. 86-1069

Supreme Court, U.S.  
**FILED**

**JAN 24 1987**

JOSEPH F. SPANIOL, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1986

— o —  
JOHN WAGNER, et al., *Petitioners*,

vs.

JOSEPH BRAZAS, et al., *Respondents*.

— o —  
**ANSWER TO PETITION FOR A WRIT OF  
CERTIORARI TO THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA [SECOND APPELLATE  
DISTRICT, DIVISION TWO]**

— o —  
STONE & HEALY  
MICHAEL P. STONE  
Equitable Plaza  
3435 Wilshire Boulevard  
24th Floor  
Los Angeles, California 90010  
*Counsel for Respondents*  
(213) 382-5444

## TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
DISCUSSION:	
1. THE FIRST AMENDMENT DOES NOT PRECLUDE THE ADMISSION OF SPEECH AS EVIDENCE OF CIVIL CONSPIRACY. ....	2
2. <i>N.A.A.C.P. V. CLAIBORNE HARDWARE</i> IS INAPPLICABLE ON THE ISSUE OF LIABILITY OF A NATIONAL ORGANIZATION, AS THE RECORD DOES NOT SHOW A DISTINCT NATIONAL ORGANIZATION WHICH DISAPPROVED A LOCAL ACTION. ....	4
3. FINDINGS IN SUPPORT OF LIABILITY OF INDIVIDUAL PETITIONERS SATISFIED APPLICABLE CONSTITUTIONAL CRITERIA, SINCE THE EVIDENCE ESTABLISHED THAT THE GROUP POSSESSED UNLAWFUL GOALS AND THE PETITIONERS HAD SPECIFIC INTENT TO FURTHER THESE GOALS. ....	5
4. THE TRIAL COURT FINDING OF CONTEMPT RAISES NO FREEDOM OF ASSOCIATION ISSUE, SINCE THE MATTERS AT ISSUE WERE RAISED BY PETITIONERS ON DIRECT EXAMINATION. ....	7
5. PRIOR RESTRAINT ON EXPRESSION IS IRRELEVANT TO THE ISSUE OF CIVIL LIABILITY FOR PERSONAL INJURY. ....	7
CONCLUSION .....	8

# TABLE OF AUTHORITIES

Page

## CASES:

<i>N.A.A.C.P. v. Claiborne Hardware</i> (1982) 458 U.S. 886 .....	1, 3, 4, 5, 6
<i>Noto v. United States</i> (1961) 367 U.S. 290 .....	6

## RULES:

Rule 17 of the Rules of the Supreme Court of the United States .....	8
Rule 17.1 of the Rules of the Supreme Court of the United States .....	1
Rule 17.1(c) of the Rules of the Supreme Court of the United States .....	1

## INTRODUCTION

Joseph Brazas, et al., respondents in the above entitled action, oppose the Petition for Writ of Certiorari submitted by John Wagner, et al.

The Petition fails to satisfy the standard governing review on certiorari set forth in Rule 17.1 of the Rules of the Supreme Court of the United States (28 United States Code), that "a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Petitioners' arguments appear to be designed to fit the criteria stated in Rule 17.1 (c), which provides that review will be considered "when a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court." Upon careful examination, the issues of federal law raised by the Petition are illusory. Purported conflict with the U.S. Supreme Court decisions noted by petitioners are reconcilable in each instance.

The arguments upon which the Petition is based can be stated most consistently with Rule 17.1 in the following manner:

1. The admission of constitutionally protected speech as evidence of civil conspiracy conflicts with the decision in *N.A.A.C.P. v. Claiborne Hardware* (1982) 458 U.S. 886.

2. Liability of a national political organization for local actions conflicts with *N.A.A.C.P. v. Claiborne Hardware, supra*.

3. Liability of individual defendants for conspiracy was imposed pursuant to evidence insufficient to meet standards set by U.S. Supreme Court decisions.

4. The trial court's finding of contempt against witnesses who refused to answer questions on cross examination abridged petitioners' First Amendment rights to freedom of association.

5. Petitioners had been denied freedom of speech prior to inflicting the injuries which were the subject of this litigation.

Review by this Court is not necessary, since no important question of federal law has been raised, and no irreconcilable conflict with applicable decisions of this Court has been shown.

---

## DISCUSSION

### **1. THE FIRST AMENDMENT DOES NOT PRECLUDE THE ADMISSION OF SPEECH AS EVIDENCE OF CIVIL CONSPIRACY.**

Included as part of the evidence of civil conspiracy admitted at trial were various political slogans and expressions used at prior meetings of the Progressive Labor Party. Petitioners contend that as a result of the admission into evidence of constitutionally protected speech, "the jury's verdict was impermissibly tainted by reliance on political expression which should not have formed any part of the basis for liability for damages" (Petition, page 41). Petitioners argue that the admission of such evidence con-



flicts with this Court's decision in *N.A.A.C.P. v. Claiborne Hardware* (1982) 458 U.S. 886, which holds that "the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages" (458 U.S. at 917-918).

*N.A.A.C.P. v. Claiborne Hardware* is inapposite to the present circumstances. In that case, plaintiffs sought recovery of economic losses to business establishments resulting from a boycott by a civil rights organization. In that case, the damages were a direct consequence of the constitutionally protected expression. In the present case, personal injuries violently inflicted by petitioners provided the basis for recovery. Elaborating on the "restraints" imposed by the presence of constitutionally protected activity this Court concluded that "while the state may legitimately impose damages for the consequences of violent conduct, it may not award compensation for the consequences of non-violent, protected activity" (458 U.S. at 918).

In the present case, the role of constitutionally protected expression is limited to evidence of civil conspiracy. If constitutionally protected expression were not admissible as evidence of civil conspiracy, there would be virtually no remaining source to prove this tort under any imaginable circumstance.

**2. N.A.A.C.P. V. CLAIBORNE HARDWARE IS IN-  
APPLICABLE ON THE ISSUE OF LIABILITY OF  
A NATIONAL ORGANIZATION, AS THE RECORD  
DOES NOT SHOW A DISTINCT NATIONAL OR-  
GANIZATION WHICH DISAPPROVED A LOCAL  
ACTION.**

Petitioners argue that the liability of the "national" Progressive Labor Party for local actions conflicts with this Court's holding in *N.A.A.C.P. v. Claiborne Hardware*, Petitioners interpret this decision to preclude liability of a national organization "absent a finding that it had authorized or ratified local representatives to commit or threaten acts of violence" (Petition, page 41). In advancing this argument, petitioner misquotes the facts and holding of that case. This Court held that "the N.A.A.C.P.—like any other organization—of course may be held responsible for the acts of its agents throughout the country that are undertaken within the scope of their actual or apparent authority" (458 U.S. at 928). Plaintiffs sought to hold the N.A.A.C.P. liable for damages resulting from statements by Charles Evers, its paid representative in Mississippi. On the question of whether "Evers or any other N.A.A.C.P. member had either actual or apparent authority" from the organization to make the statements, the Court observed that "the evidence in the record suggests the contrary. . . . The statements attributed to Evers were directly contrary to N.A.A.C.P. policy" (458 U.S. at 932). The record of the present case lacks the showing of national office disapproval upon which this Court based its reasoning in *Claiborne Hardware*.

Petitioners observe that in affirming the trial court judgment, the California Court of Appeal held that the "record is devoid of any proof that these (national and local) were distinct entities" (Petition, p. 44). Petitioners contend that "in so doing, the appellate court failed to apply the criteria for liability of the national organization set forth in *N.A.A.C.P. v. Claiborne Hardware*." Since the California Court of Appeal found the evidence insufficient to establish the distinctness of any national and local entity, the criteria for liability of the national organization set forth in *N.A.A.C.P. v. Claiborne Hardware* would be inapplicable to the present case, and the court's refusal to apply such criteria was appropriate under the circumstances.

**3. FINDINGS IN SUPPORT OF LIABILITY OF INDIVIDUAL PETITIONERS SATISFIED APPLICABLE CONSTITUTIONAL CRITERIA, SINCE THE EVIDENCE ESTABLISHED THAT THE GROUP POSSESSED UNLAWFUL GOALS AND THE PETITIONERS HAD SPECIFIC INTENT TO FURTHER THESE GOALS.**

Petitioners request a review of individual liability of petitioners for civil conspiracy, to determine whether the lower courts failed to apply the test articulated in decisions of this Court regarding liability of individuals for participation in a conspiracy. Petitioners cite *Claiborne Hardware* for the proposition that "civil liability may not be imposed merely because an individual belongs to a group" (485 U.S. at 921), unless it is shown that "the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims" (*id.*). Petitioners contend that the finding of liability

against certain individual defendants shows that the lower court failed to apply standards articulated in decisions of this Court. Yet petitioners' discussion of this issue fails to show that a federal question of law was decided in conflict with a decision of this Court. Petitioners do not indicate that any individual was held liable merely because he belonged to a group, or because he lacked specific intent to further the illegal aims of such a group; rather, petitioners merely challenge the sufficiency of the evidence to support the findings of liability.

Petitioners' reliance on *Noto v. United States* (1961) 367 U.S. 290 is misplaced. Dicta in that case favored a strict test of intent in proceedings under the Smith Act (28 U.S.C. 2385), to avoid unjust criminal punishment. The *N.A.A.C.P. v. Claiborne Hardware* criteria of civil liability are satisfied by the evidence as to each petitioner in this case. Sarmiento was held liable not on account of his presence, rather on account of his participation, as shown by two photographs (See Petition, p. A-16). The liability of Mora was founded upon his assent to the unlawful goals of the group, as manifested by his presence at meetings at which the plan to use sticks was formally adopted, coupled with his possession of a stick when arrested (See Petition, p. A-15 and A-16). In contrast to the economic boycott that was the subject of *N.A.A.C.P. v. Claiborne Hardware* in which acts of violence formed an incidental byproduct of constitutionally protected political activity, the unlawful acts of violence that caused the injuries in the present case were shown by the evidence to represent a natural and intended consequence of petitioners' plan to provoke a confrontation. Since a plan to resist arrest forcibly is in itself an unlawful goal, participation in the subject confronta-

tion provides evidence of intent to further the illegal aims of the organization.

**4. THE TRIAL COURT FINDING OF CONTEMPT RAISES NO FREEDOM OF ASSOCIATION ISSUE, SINCE THE MATTERS AT ISSUE WERE RAISED BY PETITIONERS ON DIRECT EXAMINATION.**

Petitioners have distorted the facts of this case by asserting that disclosure of names of members or political associates was compelled. Two of petitioners' trial witnesses were found in contempt for refusing to answer proper questions on cross examination regarding matters to which they had testified in direct examination. Petitioners contend that "only a compelling state interest will suffice to overcome" the First Amendment right of association (See Petition, pages 49 and 50). The compelling state interest in this case was simply the right to cross examine a witness on a subject introduced in direct examination.

Any contrary holding would be tantamount to allowing a witness to testify, then retreat behind a First Amendment barrier to avoid cross examination about the same subject. A witness may not invoke freedom of association to achieve this unbalanced result.

**5. PRIOR RESTRAINT ON EXPRESSION IS IRRELEVANT TO THE ISSUE OF CIVIL LIABILITY FOR PERSONAL INJURY.**

Petitioners contend that the police admonition not to use a bullhorn, which arguably precipitated the confrontation which is the subject of this case, constituted a prior

restraint on freedom of expression. Petitioners have failed to show that they have standing to raise this issue, or that respondents are in any way responsible for the act alleged. Furthermore, petitioners do not explain what legal effect a finding that a prior restraint occurred would have upon the civil proceedings of record in this case. Petitioners have not specified what legal remedy they seek for this purported prior restraint. The issue of prior restraint would acquire relevance to this case only if petitioners assert that a prior restraint of expression gives the victim immunity from civil liability for acts of battery. Finally, petitioners have failed to indicate why this purported prior restraint presents the type of special and important reason for review that would invoke the discretion of this Court to grant the Writ of Certiorari.

---

o

### CONCLUSION

Respondents submit that review of this case will not serve the purposes of this Court as mandated by Rule 17. Accordingly, the Petition for Writ of Certiorari ought to be denied.

Dated: January, 1987

Respectfully submitted,

STONE & HEALY

MICHAEL P. STONE

*Attorneys for Respondents*

